

Ordinance No. 123118

Council Bill No. 116636

AN ORDINANCE relating to the Seattle Streetcar, authorizing an agreement with the Central Puget Sound Regional Transit Authority for implementation of the First Hill Streetcar Connector Project.

Related Legislation File:

Date Introduced and Referred: 9.8.09	To: (committee): Transportation
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 10.5.09	Date Presented to Mayor: 10-6-09
Date Signed by Mayor: 10.8.09	Date Returned to City Clerk: 10.8.09
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Jan Drago

Committee Action:

Date	Recommendation	Vote
	Pass as amended (v. 4)	JD, PC, SC, JG

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
10.5.09	Passed	9-0

Law Department

ORDINANCE 123118

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3 AN ORDINANCE relating to the Seattle Streetcar, authorizing an agreement with the Central
4 Puget Sound Regional Transit Authority for implementation of the First Hill Streetcar
5 Connector Project.

6 WHEREAS, the City Council has adopted Resolution 31091 "stating the City Council's support
7 for developing a streetcar network in the City of Seattle and identifying the most
8 promising streetcar routes for the City to pursue," including the First Hill Streetcar; and

9 WHEREAS, the Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit
10 Guide, the Regional Transit System Plan for Central Puget Sound (ST2) on July 24, 2008;
11 and

12 WHEREAS, ST2 includes, within the Link Light Rail Program, capital and operating
13 contributions to "a new streetcar connector line between downtown Seattle, First Hill, and
14 the future Capitol Hill light rail station;" and

15 WHEREAS, the City is entering into the attached Memorandum of Agreement with Sound
16 Transit knowing that ST2 provides on-going operations and maintenance funding for the
17 First Hill Streetcar both during and beyond the term of this agreement; and

18 WHEREAS, the Sound Transit Board of Directors called an election to approve local taxes to
19 implement ST2, which measure was approved by the electorate on November 4, 2008;
20 and

21 WHEREAS, the City is responsible for administering state and local transportation and land use
22 laws and development regulations that will apply to the development of the project and is
23 also responsible for managing streets and municipal utilities within its jurisdiction and for
24 providing municipal services; and

25 WHEREAS, the City has experience in the design, construction and operation of modern
26 streetcar connectors, having recently completed design and construction of the South
27 Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental
28 agreement with King County for Seattle Streetcar Operations & Maintenance; and

WHEREAS, the City has extensive experience with the General Contractor/Construction
Manager (GC/CM) alternative public works contracting procedures authorized by RCW

1 Chapter 39.10, including use of the GC/CM procedure for construction of the South Lake
2 Union Line of the Seattle Streetcar; and

3 WHEREAS, the Chief Executive Officer of Sound Transit and the Director of Transportation
4 have reached an agreement in principle providing for the City to design, build, operate
5 and maintain the First Hill Streetcar, and for Sound Transit to provide capital funding of
6 up to \$120 million (in 2007 dollars) and operating funding of up to \$5.2 million annually
7 (in 2007 dollars); NOW, THEREFORE

8 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

9 Section 1. The Mayor or his designee is authorized to execute an agreement substantially
10 in the form of Attachment A.

11 Section 2. The Director of the City's Department of Transportation shall provide written
12 quarterly progress reports to the Chair of the City Council's Transportation Committee and the
13 City Council's Central Staff Director beginning January 1, 2010, and continuing until the project
14 is completed. Such progress reports shall include: 1) accounting for funds spent and
15 encumbered, along with narrative explanation; 2) a comparison to date of projected vs. actual
16 costs; and 3) any other information needed to assess the likelihood the project will be completed
17 on-time and on-budget.

18 Section 3. The Executive may not execute a construction contract for the First Hill
19 Streetcar until authorized by the City Council by resolution or ordinance.

20 Section 4. The Executive may not execute a third party operating agreement for the First
21 Hill Streetcar until authorized by the City Council by resolution or ordinance.

22 Section 5. The Director of the City's Department of Transportation shall provide to the
23 Chair of the City Council's Transportation Committee and the City Council's Central Staff
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1 Director a copy of the written certification that it sends to Sound Transit as required in Section
2 2.6 of the agreement in Attachment A.

3 Section 6. Except for amending Exhibit D in Attachment A, the City may not waive,
4 modify, add to, or amend the agreement in Attachment A without prior City Council approval by
5 resolution or ordinance.

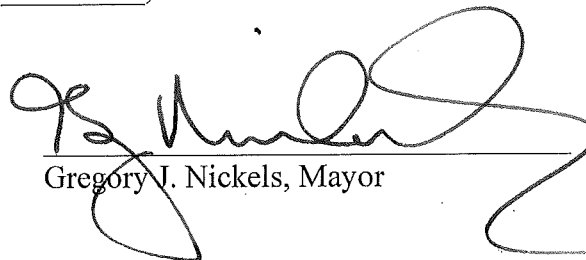
6 Section 7. This ordinance shall take effect and be in force thirty (30) days from and after
7 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
8 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

9 Passed by the City Council the 5th day of October, 2009, and signed by me in open
10 session in authentication of its passage this 5th day of October, 2009.

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15 President _____ of the City Council

16 Approved by me this 8th day of October 2009.

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20 Gregory J. Nickels, Mayor

21 Filed by me this 8th day of October 2009.

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25 City Clerk

26 (Seal)



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Attachment A – FUNDING AND COOPERATIVE AGREEMENT between the Central Puget
Sound Regional Transit Authority and the City of Seattle for the Implementation of the
First Hill Streetcar Connector Project
Exhibit A to Attachment A – Minimum Scope of Work for First Hill Streetcar Connector Project
Exhibit B to Attachment A – First Hill Project Capital Payments Schedule
Exhibit C to Attachment A – First Hill Project O & M Sample Payments Schedule
Exhibit D to Attachment A – Primary Contacts

ATTACHMENT A
FUNDING AND COOPERATIVE AGREEMENT BETWEEN
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND
THE CITY OF SEATTLE
FOR THE
IMPLEMENTATION OF THE FIRST HILL STREETCAR CONNECTOR
PROJECT

This funding and cooperative agreement (“**Agreement**”) is between the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 (“**Sound Transit**”) and the City of Seattle, a Washington municipal corporation (“**City**”).

RECITALS

A. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound (“ST2”) on July 24, 2008. ST2 includes, within the Link Light Rail Program, capital and ongoing operating contributions to “a new streetcar connector line between downtown Seattle, First Hill, and the future Capitol Hill light rail station” (“the Project”). As stated in the adopted ST2 plan, “(t)he new connector will also provide convenient access to the Sounder commuter rail system and regional bus services.” The Sound Transit Board of Directors called an election to approve local taxes to implement ST2, which measure was approved by the electorate on November 4, 2008.

B. On January 26, 2006, the Sound Transit Board authorized staff to proceed with the second phase of the First Hill Work Program – technical work on potential First Hill transit connector (streetcar and bus) improvements in the Broadway and Madison corridors. This effort included conceptual engineering (five percent design completion), preparation of cost estimates, and consideration of environmental issues. The purpose of the study was to further evaluate the feasibility of improved regional transit access to the First Hill area. The Motion also confirmed that no further work would be advanced on the

previous First Hill light rail station or alternative light rail station sites. Sound Transit staff, in cooperation with City of Seattle and King County Metro staff, and with the support of the ST2 engineering design team, completed the First Hill Work Program on April 17, 2007.

C. The City is responsible for administering state and local transportation and land use laws and development regulations that will apply to the construction and operation of the Project. The City is also responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services, such as public safety.

D. The City has experience in the design, construction and operation of modern streetcar connectors, having recently completed design and construction of the South Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental agreement with King County for Seattle Streetcar Operations & Maintenance.

E. The City has extensive experience with the General Contractor/Construction Manager ("GC/CM") alternative public works contracting procedures authorized by RCW 39.10, including use of the GC/CM procedure for construction of the South Lake Union Line of the Seattle Streetcar.

F. The City Council has adopted Resolution 31091 "stating the City Council's support for developing a streetcar network in the City of Seattle and identifying the most promising streetcar routes for the City to pursue," including the Project.

G. Both Sound Transit and the City ("the Parties") have determined that it is in the public interest for the City to construct and operate the Project.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:

AGREEMENT

1. Project Scope

The Project consists of the design and construction (directly or by others under the City's direction) of the Project as set forth in the "Minimum Scope of Work" which is attached hereto as **Exhibit A**, and is made part of this Agreement by this reference. The Project includes management and implementation of all actions required to design, construct, equip and operate the Project. The Project may also include design and construction of the streetcar connector north of the Capitol Hill Station at John Street or beyond the International District/Chinatown Station at 5th Avenue S, subject to the approval and concurrence of Sound Transit's Board and the funding limitations provided in Section 3.

2. Project Management and Construction

2.1. The Project. The City will take all steps necessary to design and construct the improvements for the Project as identified in **Exhibit A**, including without limitation environmental review and mitigation, hazardous waste removal or mitigation, coordination of all required approvals and permits, acquisition of right-of-way, purchase of streetcar vehicles, community involvement and construction management.

2.2. Outreach Plan. The City will draft a community outreach plan for project planning, design and construction, including Neighborhood Updates, for Sound Transit's review and concurrence. Prior to Sound Transit's review, the City Council will have an opportunity to review and comment on the community outreach plan. The outreach plan will address how the City will establish effective communication with property owners, residents and businesses in the Project area in order to keep them fully informed about the planning, design, construction and operation of the Project. The outreach plan will describe how the City will communicate the scope and schedule of the Project to affected property

owners, residents and businesses and how regular communication with the community will be conducted on a regular basis throughout the construction phase. Other methods of communication such as a 24-hour construction hotline and/or multi-media public information program will be considered and addressed in the outreach plan if appropriate for the Project. The outreach plan will also address how the City will mitigate impacts to residents and businesses and minimize disruption during construction, as disclosed in the environmental review process. The outreach plan will describe how information will be exchanged with non-English speaking property owners, residents or businesses, including methods for responding to complaints. A public safety education campaign to be implemented prior to testing of the system will also be included in the outreach plan. The City and Sound Transit will coordinate the outreach plans for Sound Transit's University Link project and this Project, and the City will ensure their consistency.

2.3. Construction. The City will employ or contract with all persons or entities necessary to complete construction of the Project and will be responsible for design, environmental compliance, community outreach, permitting, management, control, operation, construction, maintenance, acquisition of real property interests, and procurement of streetcar vehicles necessary to operate the Project. Sound Transit may place an engineer and/or other inspection personnel on the work site during the term of this Agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this Agreement. The City will make the site accessible to Sound Transit inspection personnel. The cost of this work by Sound Transit is an Eligible Cost and is therefore deductible against Sound Transit's maximum funding obligation, but in an amount not to exceed \$10,000 per month.

2.4. Environmental and Design Review. The City will coordinate environmental review with Sound Transit and provide Sound Transit with the opportunity for design review and coordination through construction.

2.4.1. The City will be the nominal lead agency for State Environmental Policy Act (SEPA) compliance on this Project. City SEPA rules will govern the SEPA process, including SEPA appeal procedures. The City is responsible for conducting the SEPA process and preparing and distributing all environmental documents. Sound Transit will act as a co-lead agency and have 30 calendar days to review a preliminary draft of the SEPA document and shall approve the final SEPA document in writing prior to its publication. Sound Transit and the City will coordinate with each other to ensure that the SEPA documentation provides the appropriate substantive and procedural compliance pursuant to SEPA to inform the Sound Transit Board's decision on funding the Project. The City will have lead responsibility for addressing any requirements under the National Environmental Policy Act (NEPA), should they apply.

2.4.2. The City will select the Project route, after review and approval of the route by City Council by resolution.

2.4.3. The City will provide Sound Transit with the opportunity to provide design review, approval and coordination during construction to ensure that the Project meets the Minimum Scope of Work as provided in **Exhibit A**; does not interfere with Sound Transit's construction of the Link Capitol Hill Station and University Link line; supports the goal of providing easy transfers between the Project and Link Light Rail, Sounder Commuter Rail and regional Express bus services; and to identify design issues impacting operations. Sound Transit will review and provide written comments on design documents, including cost estimates and traffic analysis, at 30-, 60- and 90- percent completion, within 21 calendar days of receipt by Sound Transit, or as otherwise agreed upon by the Primary Contacts. The City shall address and respond to every written comment submitted by Sound Transit. The City will provide a schedule of

deliverables to Sound Transit in advance so that Sound Transit can plan its review time prior to its receipt of the deliverables.

2.5. Maximum Allowable Construction Cost. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost (“**MACC**”) for the Project negotiated by the City through the GC/CM process, would commit the City to pay more than the funds available to the City for this Project, the bids or the MACC will be rejected, unless approved and funded by the City Council. In the event bids are rejected or the MACC is not executed, the Parties will decide whether to reissue the same or an amended proposal under the terms of this Agreement, or to terminate this Agreement in accordance with Section 6 of this Agreement. The City will be responsible for securing any supplemental sources of funds that may be necessary prior to proceeding with construction. Sound Transit will support the City in seeking additional funding for the Project to the extent that Sound Transit’s support does not conflict with its seeking funding for other Sound Transit projects.

2.6. City Certification. Before the City puts the Project out to bid, or before the City authorizes a GC/CM to proceed with the bidding or award of bid packages, the Director of the City’s Department of Transportation shall certify in writing to Sound Transit’s Chief Executive Officer that the bid documents for the Project meet both the capital and operating requirements of the Project scope established in Section 1.

2.7. Cost Overruns. The City shall pay any cost overruns that may occur during construction that would increase the cost beyond Sound Transit’s maximum funding obligation.

3. Sound Transit’s Financial Participation-Capital Expenditures

3.1. Maximum Funding Contribution to the Project. The ST2 Plan establishes a maximum capital contribution from Sound Transit for the Project. Sound Transit will reimburse the City for Eligible Costs as defined in section 3.2, in accordance with the schedules and maximum funding contribution set forth in the First Hill Project Capital Payments Schedule, which is attached as **Exhibit B**. However, until the City completes the environmental review of the Project and the Sound Transit Board makes a final decision to fund the Project, the City may only incur the following costs: (1) environmental documentation, (2) conceptual engineering, and (3) other costs, pre-approved by Sound Transit, that do not have an adverse environmental impact, do not limit the choice of reasonable alternatives, and are otherwise consistent with SEPA. Further, Sound Transit is not responsible for reimbursing these pre-final decision costs in an amount greater than Five Million, Four Hundred and Forty Thousand Dollars (\$5,440,000.00), unless and until the City has selected a route and the Sound Transit Board makes a final decision as to whether to fund the rest of the Project.

3.2. Eligible Costs. Eligible Costs are all costs of the Project consistent with the Project scope as defined in Section 1, including without limitation the cost of Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project, including Sound Transit's direct costs. Legal costs incurred by the City in any action against Sound Transit are specifically excluded from the category of Eligible Costs.

3.3. Invoicing and Reimbursement. The City will invoice Sound Transit for Project work done at least 30 days before the "Reimbursable Due Dates" listed in Exhibit B. A properly documented invoice includes documentation that the Project work that the City seeks reimbursement for has been performed. Upon Sound Transit's preliminary determination that the City has submitted a properly documented invoice for Eligible Costs incurred by the City, Sound Transit will reimburse the City on the quarterly Reimbursement Due Date in an amount not to

exceed the funding reimbursement provided in Exhibit B for that particular Reimbursement Due Date, plus any funds from previous quarters that have not been previously requested by the City. However, if the City submits its invoices after 30 days before the Reimbursement Due Date, Sound Transit will reimburse the City within 30 days of its receipt of the properly documented invoice. Upon final acceptance and closeout of the Project construction, the Parties will reconcile final Eligible Costs, and Sound Transit will pay the balance of all unreimbursed Eligible Costs, less Sound Transit's direct costs for Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project and actual cost of funds to make payments, according to the maximum amount reflected on the Exhibit B payment schedule.

4. Operations and Maintenance

4.1 City Responsibility. The City is responsible for operating and maintaining the Project. Sound Transit is not obligated to fund the operations and maintenance of a project that does not meet the minimum Project scope established in Section 1. If the City determines that the cost to operate all of the planned service described in Section 1 will exceed total resources available to the City from the Sound Transit contribution described in section 4.5, the advertising and sponsorship revenues described in section 4.9, and any grant funding that may be obtained from other Federal, State or local sources, the City shall give fifteen months notice to Sound Transit and submit a proposed plan with alternatives to align costs and revenues. The City's proposed plan should include a detailed analysis demonstrating that the City has implemented all best management practices and reasonable operating efficiencies. The City's proposed plan should include a thorough analysis of alternatives that include cost-cutting measures that minimize service reduction. Within three months of this notice, Sound Transit may approve the City's proposed plan, or an alternative plan agreed upon by the parties, or may elect to operate the Project directly beginning 15 months from the City's notice. If Sound Transit exercises this right to operate the Project directly,

the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

The City is also responsible for conducting fare enforcement for the Project in accordance with Sound Transit's policy requiring that on-board verification of fare payment occur for a minimum of ten percent (10%) of riders each day. Fare enforcement is an eligible operations and maintenance expense under this Agreement

4.2 Third Party Operator. The City may contract with a third party operator to operate and maintain the Project for up to five years. At Sound Transit's request, the City will include Sound Transit on the contractor selection panel.

4.3 Start of Operations. If the City cannot obtain a third party operator, the City and Sound Transit may enter into negotiations for operation and maintenance of the Project by Sound Transit.

4.4 Sound Transit's Reservation of Right to Operate. Sound Transit reserves the right to operate the Project directly after five years of operation, or pursuant to the provisions of Section 4.1. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

4.5 O&M Funding and Payments. In accordance with the ST2 operations and maintenance cost estimate, Sound Transit will contribute certain annual capped amounts to fund O&M costs, that will vary depending on whether operations start before or after July 1, 2016, but will not exceed the present value

of the payment stream projected in the ST2 operations and maintenance cost estimate, which is based on a maximum annual payment of \$5.2 million (in 2007 dollars) beginning July 1 2016 and continuing through 2023. If operations begin prior to July 1, 2016, the annual payments will be lowered so that total payments will not exceed this present value. Examples of the maximum annual payments associated with possible passenger service dates for operations are illustrated in **Exhibit C**. The City will invoice Sound Transit quarterly for estimated costs not to exceed one-quarter of the maximum annual payment authorized, less Sound Transit's Eligible O&M expenses. Actual, Eligible O&M Expenses will be reconciled against payments annually. In the event the annual reconciliation determines that Sound Transit has paid City in excess of the actual eligible costs for the prior year, the excess amount will be deducted from the payments scheduled for the following year.

4.6 Eligible O&M Expenses for Reimbursement. Eligible O&M Expenses include payments to a third party operator; direct expenses of the City or Sound Transit, which may include administration and the cost of any operation and maintenance responsibilities retained by the City or Sound Transit; insurance expenses; annual depreciation expense of up to Six-Hundred Thousand Dollars (\$600,000) per year in 2012 dollars, adjusted according to the indices established by Sound Transit; and any tax associated with this reimbursement. The payment for depreciation expense will be deposited into a City fund restricted to payment of major maintenance, repair, replacement and regulatory compliance expenses for the Project. The City will provide an annual, written report to Sound Transit on depreciation fund activity including deposits, expenditures and uses of the funds.

4.7 Fare Box Revenue. Sound Transit will determine the fares to be charged to passengers consistent with regional fare policy and will retain fare box revenue.

4.8 Costs in Excess of Sound Transit Funding Obligation. The City is responsible for major maintenance, replacement, and all remaining O&M expenses beyond the amount Sound Transit contributes as provided in Section 4.5 and 4.6.

4.9 Other Revenues. Other revenues, including but not limited to revenues from agreements for advertising or sponsorship of vehicles and stations, shall be retained by the City and be available for any purpose related to the operation, maintenance or development of the Seattle Streetcar Network. Sound Transit shall have right of first refusal to enter into agreements with the City for sponsorship of vehicles and/or stations, at a price equal to fifty percent of the advertising or sponsorship rates currently in effect at the time of the agreements.

4.10 Acknowledgement of Funding. The City will ensure acknowledgement of Sound Transit funds for the Project is noted in any Project advertisements and postings. The graphic identity of the vehicles, facilities and collateral and web-based materials will incorporate both the City's Seattle Streetcar and the Sound Transit logo and identity.

4.11 Ownership and Use of Facilities. The City will own the Project facilities and vehicles. The City may deploy vehicles acquired for the Project on any connecting portions of the City's existing and proposed streetcar network, upon Sound Transit's written concurrence that the proposed deployment does not negatively affect the quality or level of service of the Project service area. The City will not abandon or transfer any of the facilities or right-of-way required for the operation of the Project without giving Sound Transit right of first refusal to enter into a no-cost agreement with the City for the transfer of ownership, right-of-way use, and operation of the Project as designed to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the right-of-way.

4.12 Customer Service and Information. The City will provide customer service for the Project. The customer service quality will be at least equivalent to the customer service provided for Sound Transit's Link Light Rail.

4.13 Federal Funding. As a condition of Sound Transit's receipt of federal grant funds to acquire capital assets in connection with Central Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an "Agreement Pursuant to Section 13 (c) of the Federal Transit Act", dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit's 13(c) Agreement). With respect to City employees (or the City's contracted operator's employees, including King County's employees), the City agrees to comply with the terms of Sound Transit's 13(c) Agreement and ensures that its operator complies with the provisions of Sound Transit's 13(c) Agreement.

5. Dispute Resolution

5.1. Sound Transit and the City shall confer to resolve disputes that arise under this Agreement as requested by either party.

5.2. The individuals identified in the attached **Exhibit D** are the Designated Representatives of the Parties for the purpose of resolving disputes that arise under this Agreement. The parties may unilaterally amend this exhibit to change their respective representative by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

5.3 In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the City's Department of Transportation, or their designees, shall confer and resolve the dispute.

5.4 Sound Transit and the City agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

6 Termination of the Agreement

6.1 Termination if Project Deemed Too Expensive. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost (“MACC”) for the Project negotiated by the City through the GC/CM process, would commit either party to pay more than the funds available to that party for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, either Party may terminate this Agreement after eighteen months from the date that a bid has been rejected, although a City termination requires City Council approval by resolution or ordinance.

6.2 Termination for Default. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 days. If the failure or violation is not corrected, this Agreement may be terminated five working days from written notice of the aggrieved party’s intent to terminate.

6.2.1 Sound Transit Default. In the event of termination due to Sound Transit default, Sound Transit will compensate the City for all contract closeout costs, the portion of work which has been satisfactorily rendered to the date of termination, and executed long-lead procurement contracts that cannot be cancelled.

6.2.2 City Default. In the event of termination due to City default prior to operation, the City will reimburse Sound Transit for its funding under this Agreement. If the termination occurs after the start of operations,

then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project to Sound Transit, including the depreciation fund under section 4.6. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way.

6.3 Termination for Convenience. During design or construction of the Project, either party may terminate this Agreement convenience. This termination will not extinguish or release either party from liability, claims or obligations to third parties existing as of the time of termination including contractor claims and costs incurred by the party in the implementation of the Project. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement. The party terminating for convenience is obligated to pay for all construction closeout costs. The parties agree to work together cooperatively to develop a coordinated plan for termination including the determination of reasonable contract closeout costs.

6.4 Procedures upon Termination. Sound Transit and the City agree to apply the following procedures after either party terminates this Agreement:

6.4.1 The parties shall seek a joint determination on the status of each cost component of the work at the initiation of termination.

6.4.2 The parties shall seek consensus on the action to be taken on each component.

6.4.3 The parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.

6.4.4 The parties shall agree upon a cost estimate for terminating any third party contracts that have been executed under the Agreement.

6.5 Survival of this Section. The terms and responsibilities of the Parties under this Section 6 will survive termination of this Agreement

7 Audit

The City agrees to cooperate fully with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project. In the event the audit determines that Sound Transit has paid City in excess of the amounts approved by Sound Transit for the Project, the excess amount will be repaid to Sound Transit. In the event the audit determines that City has incurred costs for the Work that exceeds payment made by Sound Transit, Sound Transit shall pay City the amount owed, up to its maximum funding obligations under this Agreement.

8 General Provisions.

8.1 No Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party. In performing work and services pursuant to this Agreement, Sound Transit, its employees, consultants, agents, and representatives shall be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of City in any manner whatsoever. Sound Transit shall not hold itself out as, nor claim to be, an officer or employee of City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of City. Sound Transit shall be solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold City harmless therefrom. In performing work and services pursuant to this Agreement, City, its employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of the Sound Transit in any manner whatsoever. City shall not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of Sound Transit. City shall be solely responsible for any claims for wages or compensation by City's employees, consultants, agents, and representatives,

including sub-consultants, or any agency, and shall defend, indemnify, and hold Sound Transit harmless therefrom.

8.2 Indemnity.

8.2.1 Generally. Each party to this Agreement shall protect, defend, indemnify, and save harmless the other party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from the first party's negligent or grossly negligent acts or omissions or its intentional misconduct or that of its officers, officials, employees or agents. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from the responsible party to the extent of that party's liability.

8.2.2 13(c) Liability. The City shall defend, indemnify, and hold harmless Sound Transit its officials and employees against any and all claims, demands, suits, actions, damages or liability

(collectively “13(c) Claims”) for labor protections provided to transit employees within Sound Transit’s service area under 49 U.S.C. §5333(b) that are based upon a Sound Transit 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the Project service. The City’s obligation shall apply whether the claim is brought under a Sound Transit 13(c) agreement or a City or King County 13(c) agreement, or all, and whether it is brought against Sound Transit or against the City or County, or against any all. Notwithstanding any other requirements of this provision, the City's obligation shall not extend to any claim or liability based upon any act or omission of Sound Transit or anyone acting on behalf of Sound Transit.

8.2.3 Taxes. Taxes, including taxes relating to Sound Transit’s reimbursement of the City’s cost, are a reimbursable cost under this Agreement. The City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, miscellaneous tax, due to the taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

8.2.4 Survival. The indemnification responsibilities provided in this section will survive the termination of this Agreement.

8.3 Claims.

8.3.1 Each party shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such party is liable under this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

8.3.2 In the event a suit is commenced against either party, or a claim is asserted for loss or damage for which the other party may be solely or jointly liable under this Section, the party sued, or against whom the claim is asserted, promptly shall notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

8.3.3 In the event that both of the parties may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the parties, a release from liability shall be taken for and in the name of both parties. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars (\$50,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. It is not the intent of the Parties that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

8.3.4 It is not the intent of the parties for either party to be conclusively bound by any judgment against the other party.

9 Miscellaneous

9.1 Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement and understanding between City and Sound Transit relating to the Project. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.

9.2 Amendments. Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the authorized representatives of

each party. Except for amending Exhibit D, the City may not waive, modify, add to, or amend this Agreement without City Council approval by resolution.

9.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

9.4 Primary Contacts. The primary contacts for each party in the day-to-day dealings of this Agreement are listed in **Exhibit D**. The parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

9.5 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: **(i)** delivered in person, **(ii)** deposited postage prepaid in the certified mails of the United States, return receipt requested, **(iii)** delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or **(iv)** delivered electronically to the other party's primary contact as listed in **Exhibit D**. However, notice under section 6, Termination, must be delivered in person or by certified mail, return receipt requested.

9.6 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and

not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either party of any default will not affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

9.7 Choice of Forum. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

9.8 Transfer/Assignment. Neither party may assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other party. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

9.9 Benefits. This Agreement is intended for the sole benefit of the parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the parties any legal or equitable right, remedy, or claim under this Agreement.

9.10 Preparation. The parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the parties intend that this Agreement is the joint work product of the parties. The parties do not intend for any provision of this Agreement to be construed against a party on the basis of authorship.

9.11 Counterparts. This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

9.12 Authority. The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their city or regional transit authority, respectively.

9.13 City Council Approval. There are sections in this agreement where the City Council is required to approve the City's position before it is entitled to act under this Agreement. This agreement is not amended by language requirements or conditions of City Council resolutions or ordinances that are not also included in amendments to this agreement agreed to by Sound Transit.

10 Term of Agreement.

The term of this Agreement is from the last date written below and, unless it is otherwise terminated in accordance with the provisions of this Agreement, until December 31, 2023. This agreement will automatically extend for an additional five-year term unless either party provides notice to the other party of its intention to allow the agreement to terminate no later than August 31, 2021. If the City provides notice of its intent to allow the Agreement to expire, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project, including the depreciation fund provided under section 4.6, to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way. The agreement will continue to automatically extend for additional five-year periods unless either party provides notice of its intent to allow the Agreement to expire no later than 16 months before the expiration date.

The authorized representatives of Sound Transit and City are signing this Agreement and the effective date shall be the last date written below.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

CITY OF SEATTLE

Signed: _____

Signed: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Approved to form

Approved to form

Legal Counsel: _____

Assistant City Attorney:

Dated: _____

Dated: _____

Exhibit A

Minimum Scope of Work for First Hill Streetcar Connector Project

The purpose of the First Hill Streetcar Connector Project (the Project) is to replace the connection to the regional Link light rail system lost when the First Hill light rail station was deleted from the regional system. The streetcar connector will directly connect First Hill employment centers to the regional Link light rail system at the International District/Chinatown Station at 5th Avenue S and the Capitol Hill Station at Broadway between E. Denny Way and John Street. If operations begin prior to July 1, 2016, the Project may feature an interim terminus in the vicinity of Pike and Pine streets.

The Project fleet (inclusive of at least one spare vehicle) and facilities will accommodate the service plan:

Service Plan	
1. Service Plan: Span of Service	Monday-Saturday 5AM to 1 AM Sundays/Holidays 7 AM to 7 PM
2. Service Plan: Peak/Off Peak Headways	Peak Periods: Trains Arrive Every 10 Minutes Off Peak: Trains Arrive Every 15 Minutes
3. Service Plan: Peak Service Periods	Peak Periods: 6 AM-9 AM M-F, 4PM -7PM M-F

The service plan may be adjusted with the written concurrence of Sound Transit.

The Project will provide local and inter-neighborhood transit service using modern low-floor light rail vehicles, similar to the streetcar vehicles operating in Portland, Seattle and Tacoma. The streetcars operate in single trainsets. The streetcars will generally operate in a mixed flow of traffic on urban arterial streets, typically with transit signal priority at intersections, and occasionally operating in restricted (transit-only) lanes or exclusive right-of-way. The Project will be double-tracked, although termini or exclusive-lane segments may feature a short segment of single track if this will not impede service objectives.

The Project will meet or exceed all accessibility requirements and includes a variety of passenger amenities on board, at passenger platforms and on the internet, including transit shelters, real-time arrival information, automated passenger information, and wayside and on-board ticketing. Use of the ORCA regional smart card will be accommodated either on-board, wayside, or with both of these methods of fare payment.

Passenger platforms will typically be spaced at distances of 1,250 to 2,000 feet and will be sited to best balance proximity of service to major activity areas with speed and reliability objectives.



The Project will include all construction, right-of-way and equipment necessary to meet the service objectives, including but not limited to:

- paved track and special track;
- traction power system and overhead contact system;
- train control system and train signaling;
- passenger platforms and amenities including miscellaneous electrical service to amenities;
- a light maintenance and vehicle storage facility and vehicle maintenance equipment;
- roadway and drainage modifications;
- traffic signal modifications;
- street lighting modifications;
- utility relocation, protection and bridging necessitated by the Project;
- relocation of overhead trolley bus wires where necessary;
- mitigation measures; and
- an Art Program.

The Art Program will be administered by the City and is budgeted at \$750,000 in 2011 dollars to represent approximately 1% of estimated construction expenditure.

The Project will be designed to allow for connections to other segments of the City's planned streetcar network and may include extensions beyond the minimum scope of work.



Exhibit B

First Hill Project Capital Payments Schedule

Payment Due Date	Maximum Reimbursement (Year of Expenditure Dollars)	Cumulative Maximum (Year of Expenditure Dollars)
November 1, 2009	\$ 2,500,000	\$ 2,500,000
March 1, 2010	\$ 700,000	\$ 3,200,000
June 1, 2010	\$ 700,000	\$ 3,900,000
September 1, 2010	\$ 840,000	\$ 4,740,000
December 1, 2010	\$ 840,000	\$ 5,580,000
March 1, 2011	\$ 9,400,000	\$ 14,980,000
June 1, 2011	\$ 3,908,000	\$ 18,888,000
September 1, 2011	\$ 5,400,000	\$ 24,288,000
December 1, 2011	\$ 9,494,000	\$ 33,782,000
March 1, 2012	\$ 11,430,000	\$ 45,212,000
June 1, 2012	\$ 13,016,000	\$ 58,228,000
September 1, 2012	\$ 13,366,000	\$ 71,594,000
December 1, 2012	\$ 13,366,000	\$ 84,960,000
March 1, 2013	\$ 10,216,000	\$ 95,176,000
June 1, 2013	\$ 10,730,000	\$ 105,906,000
September 1, 2013	\$ 15,420,000	\$ 121,326,000
December 1, 2013	\$ 4,454,000	\$ 125,780,000
March 1, 2014	\$ 7,000,000	\$ 132,780,000

Exhibit B to Attachment A



Exhibit C

First Hill Project Operations & Maintenance Sample Payments Schedules Maximum Annual & Present Value Total Funding Obligation by Passenger Service Date

Passenger Service Date:		Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q1 2014	Q1 2015	Q3 2016
Year	Annual Maximum O&M Funding							
2012	\$1,210,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2013	\$4,150,000	\$4,275,000	\$3,210,000	\$2,140,000	\$0	\$0	\$0	\$0
2014	\$4,300,000	\$4,420,000	\$4,540,000	\$4,670,000	\$4,910,000	\$0	\$0	\$0
2015	\$4,450,000	\$4,570,000	\$4,700,000	\$4,830,000	\$5,080,000	\$5,670,000	\$5,670,000	\$0
2016	\$4,610,000	\$4,730,000	\$4,860,000	\$5,000,000	\$5,260,000	\$5,870,000	\$5,870,000	\$3,545,000
2017	\$4,770,000	\$4,900,000	\$5,030,000	\$5,180,000	\$5,440,000	\$6,080,000	\$6,080,000	\$7,340,000
2018	\$4,940,000	\$5,070,000	\$5,210,000	\$5,360,000	\$5,630,000	\$6,290,000	\$6,290,000	\$7,590,000
2019	\$5,110,000	\$5,250,000	\$5,390,000	\$5,550,000	\$5,830,000	\$6,510,000	\$6,510,000	\$7,860,000
2020	\$5,290,000	\$5,430,000	\$5,580,000	\$5,740,000	\$6,030,000	\$6,740,000	\$6,740,000	\$8,130,000
2021	\$5,480,000	\$5,620,000	\$5,780,000	\$5,940,000	\$6,240,000	\$6,980,000	\$6,980,000	\$8,420,000
2022	\$5,670,000	\$5,820,000	\$5,980,000	\$6,150,000	\$6,460,000	\$7,220,000	\$7,220,000	\$8,710,000
2023	\$5,870,000	\$6,020,000	\$6,190,000	\$6,370,000	\$6,690,000	\$7,470,000	\$7,470,000	\$9,020,000
Present Value:	\$41,100,000	\$41,000,000	\$41,100,000	\$41,200,000	\$41,200,000	\$41,200,000	\$41,200,000	\$41,200,000



Exhibit D

Primary Contacts

City of Seattle: Ethan Melone
Rail Transit Manager
Department of Transportation
P.O. Box 34996
Seattle, WA 98124-4996

Sound Transit: Valerie J. Batey
Senior Planner
Planning, Environment and Project Development Department
Sound Transit
401 South Jackson Street
Seattle, WA 98104



**FUNDING AND COOPERATIVE AGREEMENT BETWEEN
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND
THE CITY OF SEATTLE
FOR THE
IMPLEMENTATION OF THE FIRST HILL STREETCAR CONNECTOR
PROJECT**

FILED
CITY OF SEATTLE
2009 NOV 13 AM 10:05
CITY CLERK

This funding and cooperative agreement (“**Agreement**”) is between the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 (“**Sound Transit**”) and the City of Seattle, a Washington municipal corporation (“**City**”).

RECITALS

A. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound (“ST2”) on July 24, 2008. ST2 includes, within the Link Light Rail Program, capital and ongoing operating contributions to “a new streetcar connector line between downtown Seattle, First Hill, and the future Capitol Hill light rail station” (“the Project”). As stated in the adopted ST2 plan, “(t)he new connector will also provide convenient access to the Sounder commuter rail system and regional bus services.” The Sound Transit Board of Directors called an election to approve local taxes to implement ST2, which measure was approved by the electorate on November 4, 2008.

B. On January 26, 2006, the Sound Transit Board authorized staff to proceed with the second phase of the First Hill Work Program – technical work on potential First Hill transit connector (streetcar and bus) improvements in the Broadway and Madison corridors. This effort included conceptual engineering (five percent design completion), preparation of cost estimates, and consideration of environmental issues. The purpose of the study was to further evaluate the feasibility of improved regional transit access to the First Hill area. The Motion also confirmed that no further work would be advanced on the previous First Hill light rail station or alternative light rail station sites. Sound Transit

staff, in cooperation with City of Seattle and King County Metro staff, and with the support of the ST2 engineering design team, completed the First Hill Work Program on April 17, 2007.

C. The City is responsible for administering state and local transportation and land use laws and development regulations that will apply to the construction and operation of the Project. The City is also responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services, such as public safety.

D. The City has experience in the design, construction and operation of modern streetcar connectors, having recently completed design and construction of the South Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental agreement with King County for Seattle Streetcar Operations & Maintenance.

E. The City has extensive experience with the General Contractor/Construction Manager ("GC/CM") alternative public works contracting procedures authorized by RCW 39.10, including use of the GC/CM procedure for construction of the South Lake Union Line of the Seattle Streetcar.

F. The City Council has adopted Resolution 31091 "stating the City Council's support for developing a streetcar network in the City of Seattle and identifying the most promising streetcar routes for the City to pursue," including the Project.

G. Both Sound Transit and the City ("the Parties") have determined that it is in the public interest for the City to construct and operate the Project.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:

AGREEMENT

1. Project Scope

The Project consists of the design and construction (directly or by others under the City's direction) of the Project as set forth in the "Minimum Scope of Work" which is attached hereto as **Exhibit A**, and is made part of this Agreement by this reference. The Project includes management and implementation of all actions required to design, construct, equip and operate the Project. The Project may also include design and construction of the streetcar connector north of the Capitol Hill Station at John Street or beyond the International District/Chinatown Station at 5th Avenue S, subject to the approval and concurrence of Sound Transit's Board and the funding limitations provided in Section 3.

2. Project Management and Construction

2.1. The Project. The City will take all steps necessary to design and construct the improvements for the Project as identified in **Exhibit A**, including without limitation environmental review and mitigation, hazardous waste removal or mitigation, coordination of all required approvals and permits, acquisition of right-of-way, purchase of streetcar vehicles, community involvement and construction management.

2.2. Outreach Plan. The City will draft a community outreach plan for project planning, design and construction, including Neighborhood Updates, for Sound Transit's review and concurrence. Prior to Sound Transit's review, the City Council will have an opportunity to review and comment on the community outreach plan. The outreach plan will address how the City will establish effective communication with property owners, residents and businesses in the Project area in order to keep them fully informed about the planning, design, construction and operation of the Project. The outreach plan will describe how the City will communicate the scope and schedule of the Project to affected property owners, residents and businesses and how regular communication with the

community will be conducted on a regular basis throughout the construction phase. Other methods of communication such as a 24-hour construction hotline and/or multi-media public information program will be considered and addressed in the outreach plan if appropriate for the Project. The outreach plan will also address how the City will mitigate impacts to residents and businesses and minimize disruption during construction, as disclosed in the environmental review process. The outreach plan will describe how information will be exchanged with non-English speaking property owners, residents or businesses, including methods for responding to complaints. A public safety education campaign to be implemented prior to testing of the system will also be included in the outreach plan. The City and Sound Transit will coordinate the outreach plans for Sound Transit's University Link project and this Project, and the City will ensure their consistency.

2.3. Construction. The City will employ or contract with all persons or entities necessary to complete construction of the Project and will be responsible for design, environmental compliance, community outreach, permitting, management, control, operation, construction, maintenance, acquisition of real property interests, and procurement of streetcar vehicles necessary to operate the Project. Sound Transit may place an engineer and/or other inspection personnel on the work site during the term of this Agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this Agreement. The City will make the site accessible to Sound Transit inspection personnel. The cost of this work by Sound Transit is an Eligible Cost and is therefore deductible against Sound Transit's maximum funding obligation, but in an amount not to exceed \$10,000 per month.

2.4. Environmental and Design Review. The City will coordinate environmental review with Sound Transit and provide Sound Transit with the opportunity for design review and coordination through construction.

2.4.1. The City will be the nominal lead agency for State Environmental Policy Act (SEPA) compliance on this Project. City SEPA rules will govern the SEPA process, including SEPA appeal procedures. The City is responsible for conducting the SEPA process and preparing and distributing all environmental documents. Sound Transit will act as a co-lead agency and have 30 calendar days to review a preliminary draft of the SEPA document and shall approve the final SEPA document in writing prior to its publication. Sound Transit and the City will coordinate with each other to ensure that the SEPA documentation provides the appropriate substantive and procedural compliance pursuant to SEPA to inform the Sound Transit Board's decision on funding the Project. The City will have lead responsibility for addressing any requirements under the National Environmental Policy Act (NEPA), should they apply.

2.4.2. The City will select the Project route, after review and approval of the route by City Council by resolution.

2.4.3. The City will provide Sound Transit with the opportunity to provide design review, approval and coordination during construction to ensure that the Project meets the Minimum Scope of Work as provided in **Exhibit A**; does not interfere with Sound Transit's construction of the Link Capitol Hill Station and University Link line; supports the goal of providing easy transfers between the Project and Link Light Rail, Sounder Commuter Rail and regional Express bus services; and to identify design issues impacting operations. Sound Transit will review and provide written comments on design documents, including cost estimates and traffic analysis, at 30-, 60- and 90- percent completion, within 21 calendar days of receipt by Sound Transit, or as otherwise agreed upon by the Primary Contacts. The City shall address and respond to every written comment submitted by Sound Transit. The City will provide a schedule of deliverables to Sound Transit in advance so that Sound Transit can plan its review time prior to its receipt of the deliverables.

2.5. Maximum Allowable Construction Cost. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost (“MACC”) for the Project negotiated by the City through the GC/CM process, would commit the City to pay more than the funds available to the City for this Project, the bids or the MACC will be rejected, unless approved and funded by the City Council. In the event bids are rejected or the MACC is not executed, the Parties will decide whether to reissue the same or an amended proposal under the terms of this Agreement, or to terminate this Agreement in accordance with Section 6 of this Agreement. The City will be responsible for securing any supplemental sources of funds that may be necessary prior to proceeding with construction. Sound Transit will support the City in seeking additional funding for the Project to the extent that Sound Transit’s support does not conflict with its seeking funding for other Sound Transit projects.

2.6. City Certification. Before the City puts the Project out to bid, or before the City authorizes a GC/CM to proceed with the bidding or award of bid packages, the Director of the City’s Department of Transportation shall certify in writing to Sound Transit’s Chief Executive Officer that the bid documents for the Project meet both the capital and operating requirements of the Project scope established in Section 1.

2.7. Cost Overruns. The City shall pay any cost overruns that may occur during construction that would increase the cost beyond Sound Transit’s maximum funding obligation.

3. Sound Transit’s Financial Participation-Capital Expenditures

3.1. Maximum Funding Contribution to the Project. The ST2 Plan establishes a maximum capital contribution from Sound Transit for the Project.

Sound Transit will reimburse the City for Eligible Costs as defined in section 3.2, in accordance with the schedules and maximum funding contribution set forth in the First Hill Project Capital Payments Schedule, which is attached as **Exhibit B**. However, until the City completes the environmental review of the Project and the Sound Transit Board makes a final decision to fund the Project, the City may only incur the following costs: (1) environmental documentation, (2) conceptual engineering, and (3) other costs, pre-approved by Sound Transit, that do not have an adverse environmental impact, do not limit the choice of reasonable alternatives, and are otherwise consistent with SEPA. Further, Sound Transit is not responsible for reimbursing these pre-final decision costs in an amount greater than Five Million, Four Hundred and Forty Thousand Dollars (\$5,440,000.00), unless and until the City has selected a route and the Sound Transit Board makes a final decision as to whether to fund the rest of the Project.

3.2. Eligible Costs. Eligible Costs are all costs of the Project consistent with the Project scope as defined in Section 1, including without limitation the cost of Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project, including Sound Transit's direct costs. Legal costs incurred by the City in any action against Sound Transit are specifically excluded from the category of Eligible Costs.

3.3. Invoicing and Reimbursement. The City will invoice Sound Transit for Project work done at least 30 days before the "Reimbursable Due Dates" listed in Exhibit B. A properly documented invoice includes documentation that the Project work that the City seeks reimbursement for has been performed. Upon Sound Transit's preliminary determination that the City has submitted a properly documented invoice for Eligible Costs incurred by the City, Sound Transit will reimburse the City on the quarterly Reimbursement Due Date in an amount not to exceed the funding reimbursement provided in Exhibit B for that particular Reimbursement Due Date, plus any funds from previous quarters that have not

been previously requested by the City. However, if the City submits its invoices after 30 days before the Reimbursement Due Date, Sound Transit will reimburse the City within 30 days of its receipt of the properly documented invoice. Upon final acceptance and closeout of the Project construction, the Parties will reconcile final Eligible Costs, and Sound Transit will pay the balance of all unreimbursed Eligible Costs, less Sound Transit's direct costs for Project management and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project and actual cost of funds to make payments, according to the maximum amount reflected on the Exhibit B payment schedule.

4. Operations and Maintenance

4.1 City Responsibility. The City is responsible for operating and maintaining the Project. Sound Transit is not obligated to fund the operations and maintenance of a project that does not meet the minimum Project scope established in Section 1. If the City determines that the cost to operate all of the planned service described in Section 1 will exceed total resources available to the City from the Sound Transit contribution described in section 4.5, the advertising and sponsorship revenues described in section 4.9, and any grant funding that may be obtained from other Federal, State or local sources, the City shall give fifteen months notice to Sound Transit and submit a proposed plan with alternatives to align costs and revenues. The City's proposed plan should include a detailed analysis demonstrating that the City has implemented all best management practices and reasonable operating efficiencies. The City's proposed plan should include a thorough analysis of alternatives that include cost-cutting measures that minimize service reduction. Within three months of this notice, Sound Transit may approve the City's proposed plan, or an alternative plan agreed upon by the parties, or may elect to operate the Project directly beginning 15 months from the City's notice. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement for the use of the

Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

The City is also responsible for conducting fare enforcement for the Project in accordance with Sound Transit's policy requiring that on-board verification of fare payment occur for a minimum of ten percent (10%) of riders each day. Fare enforcement is an eligible operations and maintenance expense under this Agreement

4.2 Third Party Operator. The City may contract with a third party operator to operate and maintain the Project for up to five years. At Sound Transit's request, the City will include Sound Transit on the contractor selection panel.

4.3 Start of Operations. If the City cannot obtain a third party operator, the City and Sound Transit may enter into negotiations for operation and maintenance of the Project by Sound Transit.

4.4 Sound Transit's Reservation of Right to Operate. Sound Transit reserves the right to operate the Project directly after five years of operation, or pursuant to the provisions of Section 4.1. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

4.5 O&M Funding and Payments. In accordance with the ST2 operations and maintenance cost estimate, Sound Transit will contribute certain annual capped amounts to fund O&M costs, that will vary depending on whether operations start before or after July 1, 2016, but will not exceed the present value of the payment stream projected in the ST2 operations and maintenance cost estimate, which is based on a maximum annual payment of \$5.2 million (in 2007

dollars) beginning July 1 2016 and continuing through 2023. If operations begin prior to July 1, 2016, the annual payments will be lowered so that total payments will not exceed this present value. Examples of the maximum annual payments associated with possible passenger service dates for operations are illustrated in **Exhibit C**. The City will invoice Sound Transit quarterly for estimated costs not to exceed one-quarter of the maximum annual payment authorized, less Sound Transit's Eligible O&M expenses. Actual, Eligible O&M Expenses will be reconciled against payments annually. In the event the annual reconciliation determines that Sound Transit has paid City in excess of the actual eligible costs for the prior year, the excess amount will be deducted from the payments scheduled for the following year.

4.6 Eligible O&M Expenses for Reimbursement. Eligible O&M Expenses include payments to a third party operator; direct expenses of the City or Sound Transit, which may include administration and the cost of any operation and maintenance responsibilities retained by the City or Sound Transit; insurance expenses; annual depreciation expense of up to Six-Hundred Thousand Dollars (\$600,000) per year in 2012 dollars, adjusted according to the indices established by Sound Transit; and any tax associated with this reimbursement. The payment for depreciation expense will be deposited into a City fund restricted to payment of major maintenance, repair, replacement and regulatory compliance expenses for the Project. The City will provide an annual, written report to Sound Transit on depreciation fund activity including deposits, expenditures and uses of the funds.

4.7 Fare Box Revenue. Sound Transit will determine the fares to be charged to passengers consistent with regional fare policy and will retain fare box revenue.

4.8 Costs in Excess of Sound Transit Funding Obligation. The City is responsible for major maintenance, replacement, and all remaining O&M

expenses beyond the amount Sound Transit contributes as provided in Section 4.5 and 4.6.

4.9 Other Revenues. Other revenues, including but not limited to revenues from agreements for advertising or sponsorship of vehicles and stations, shall be retained by the City and be available for any purpose related to the operation, maintenance or development of the Seattle Streetcar Network. Sound Transit shall have right of first refusal to enter into agreements with the City for sponsorship of vehicles and/or stations, at a price equal to fifty percent of the advertising or sponsorship rates currently in effect at the time of the agreements.

4.10 Acknowledgement of Funding. The City will ensure acknowledgement of Sound Transit funds for the Project is noted in any Project advertisements and postings. The graphic identity of the vehicles, facilities and collateral and web-based materials will incorporate both the City's Seattle Streetcar and the Sound Transit logo and identity.

4.11 Ownership and Use of Facilities. The City will own the Project facilities and vehicles. The City may deploy vehicles acquired for the Project on any connecting portions of the City's existing and proposed streetcar network, upon Sound Transit's written concurrence that the proposed deployment does not negatively affect the quality or level of service of the Project service area. The City will not abandon or transfer any of the facilities or right-of-way required for the operation of the Project without giving Sound Transit right of first refusal to enter into a no-cost agreement with the City for the transfer of ownership, right-of-way use, and operation of the Project as designed to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the right-of-way.

4.12 Customer Service and Information. The City will provide customer service for the Project. The customer service quality will be at least equivalent to the customer service provided for Sound Transit's Link Light Rail.

4.13 Federal Funding. As a condition of Sound Transit's receipt of federal grant funds to acquire capital assets in connection with Central Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an "Agreement Pursuant to Section 13 (c) of the Federal Transit Act", dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit's 13(c) Agreement). With respect to City employees (or the City's contracted operator's employees, including King County's employees), the City agrees to comply with the terms of Sound Transit's 13(c) Agreement and ensures that its operator complies with the provisions of Sound Transit's 13(c) Agreement.

5. Dispute Resolution

5.1. Sound Transit and the City shall confer to resolve disputes that arise under this Agreement as requested by either party.

5.2. The individuals identified in the attached **Exhibit D** are the Designated Representatives of the Parties for the purpose of resolving disputes that arise under this Agreement. The parties may unilaterally amend this exhibit to change their respective representative by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

5.3 In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the City's Department of Transportation, or their designees, shall confer and resolve the dispute.

5.4 Sound Transit and the City agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

6 Termination of the Agreement

6.1 Termination if Project Deemed Too Expensive. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost (“MACC”) for the Project negotiated by the City through the GC/CM process, would commit either party to pay more than the funds available to that party for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, either Party may terminate this Agreement after eighteen months from the date that a bid has been rejected, although a City termination requires City Council approval by resolution.

6.2 Termination for Default. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 days. If the failure or violation is not corrected, this Agreement may be terminated five working days from written notice of the aggrieved party’s intent to terminate.

6.2.1 Sound Transit Default. In the event of termination due to Sound Transit default, Sound Transit will compensate the City for all contract closeout costs, the portion of work which has been satisfactorily rendered to the date of termination, and executed long-lead procurement contracts that cannot be cancelled.

6.2.2 City Default. In the event of termination due to City default prior to operation, the City will reimburse Sound Transit for its funding under this Agreement. If the termination occurs after the start of operations,

then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project to Sound Transit, including the depreciation fund under section 4.6. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way.

6.3 Termination for Convenience. During design or construction of the Project, either party may terminate this Agreement convenience. This termination will not extinguish or release either party from liability, claims or obligations to third parties existing as of the time of termination including contractor claims and costs incurred by the party in the implementation of the Project. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement. The party terminating for convenience is obligated to pay for all construction closeout costs. The parties agree to work together cooperatively to develop a coordinated plan for termination including the determination of reasonable contract closeout costs.

6.4 Procedures upon Termination. Sound Transit and the City agree to apply the following procedures after either party terminates this Agreement:

6.4.1 The parties shall seek a joint determination on the status of each cost component of the work at the initiation of termination.

6.4.2 The parties shall seek consensus on the action to be taken on each component.

6.4.3 The parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.

6.4.4 The parties shall agree upon a cost estimate for terminating any third party contracts that have been executed under the Agreement.

6.5 Survival of this Section. The terms and responsibilities of the Parties under this Section 6 will survive termination of this Agreement

7 Audit

The City agrees to cooperate fully with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project. In the event the audit determines that Sound Transit has paid City in excess of the amounts approved by Sound Transit for the Project, the excess amount will be repaid to Sound Transit. In the event the audit determines that City has incurred costs for the Work that exceeds payment made by Sound Transit, Sound Transit shall pay City the amount owed, up to its maximum funding obligations under this Agreement.

8 General Provisions.

8.1 No Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party. In performing work and services pursuant to this Agreement, Sound Transit, its employees, consultants, agents, and representatives shall be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of City in any manner whatsoever. Sound Transit shall not hold itself out as, nor claim to be, an officer or employee of City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of City. Sound Transit shall be solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold City harmless therefrom. In performing work and services pursuant to this Agreement, City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of the Sound Transit in any manner whatsoever. City shall not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of Sound Transit. City shall be solely responsible for any claims for wages or compensation by City's employees, consultants, agents, and representatives,

including sub-consultants, or any agency, and shall defend, indemnify, and hold Sound Transit harmless therefrom.

8.2 Indemnity.

8.2.1 Generally. Each party to this Agreement shall protect, defend, indemnify, and save harmless the other party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from the first party's negligent or grossly negligent acts or omissions or its intentional misconduct or that of its officers, officials, employees or agents. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from the responsible party to the extent of that party's liability.

8.2.2 13(c) Liability. The City shall defend, indemnify, and hold harmless Sound Transit its officials and employees against any and all claims, demands, suits, actions, damages or liability

(collectively “13(c) Claims”) for labor protections provided to transit employees within Sound Transit’s service area under 49 U.S.C. §5333(b) that are based upon a Sound Transit 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the Project service. The City’s obligation shall apply whether the claim is brought under a Sound Transit 13(c) agreement or a City or King County 13(c) agreement, or all, and whether it is brought against Sound Transit or against the City or County, or against any all. Notwithstanding any other requirements of this provision, the City's obligation shall not extend to any claim or liability based upon any act or omission of Sound Transit or anyone acting on behalf of Sound Transit.

8.2.3 Taxes. Taxes, including taxes relating to Sound Transit’s reimbursement of the City’s cost, are a reimbursable cost under this Agreement. The City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, miscellaneous tax, due to the taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

8.2.4 Survival. The indemnification responsibilities provided in this section will survive the termination of this Agreement.

8.3 Claims.

8.3.1 Each party shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such party is liable under this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

8.3.2 In the event a suit is commenced against either party, or a claim is asserted for loss or damage for which the other party may be solely or jointly liable under this Section, the party sued, or against whom the claim is asserted, promptly shall notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

8.3.3 In the event that both of the parties may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the parties, a release from liability shall be taken for and in the name of both parties. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars (\$50,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. It is not the intent of the Parties that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

8.3.4 It is not the intent of the parties for either party to be conclusively bound by any judgment against the other party.

9 Miscellaneous

9.1 Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement and understanding between City and Sound Transit relating to the Project. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.

9.2 Amendments. Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the authorized representatives of each party. Except for amending Exhibit D, the City may not waive, modify, add

to, or amend this Agreement without City Council approval by resolution or ordinance.

9.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

9.4 Primary Contacts. The primary contacts for each party in the day-to-day dealings of this Agreement are listed in **Exhibit D**. The parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

9.5 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: **(i)** delivered in person, **(ii)** deposited postage prepaid in the certified mails of the United States, return receipt requested, **(iii)** delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or **(iv)** delivered electronically to the other party's primary contact as listed in **Exhibit D**. However, notice under section 6, Termination, must be delivered in person or by certified mail, return receipt requested.

9.6 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and

not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either party of any default will not affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

9.7 Choice of Forum. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

9.8 Transfer/Assignment. Neither party may assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other party. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

9.9 Benefits. This Agreement is intended for the sole benefit of the parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the parties any legal or equitable right, remedy, or claim under this Agreement.

9.10 Preparation. The parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the parties intend that this Agreement is the joint work product of the parties. The parties do not intend for any provision of this Agreement to be construed against a party on the basis of authorship.

9.11 Counterparts. This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

9.12 Authority. The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their city or regional transit authority, respectively.

9.13 City Council Approval. There are sections in this agreement where the City Council is required to approve the City's position before it is entitled to act under this Agreement. This agreement is not amended by language requirements or conditions of City Council resolutions or ordinances that are not also included in amendments to this agreement agreed to by Sound Transit.

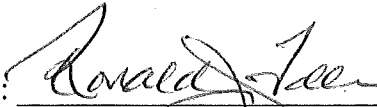
10 Term of Agreement.

The term of this Agreement is from the last date written below and, unless it is otherwise terminated in accordance with the provisions of this Agreement, until December 31, 2023. This agreement will automatically extend for an additional five-year term unless either party provides notice to the other party of its intention to allow the agreement to terminate no later than August 31, 2021. If the City provides notice of its intent to allow the Agreement to expire, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project, including the depreciation fund provided under section 4.6, to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way. The agreement will continue to automatically extend for additional five-year periods unless either party provides notice of its intent to allow the Agreement to expire no later than 16 months before the expiration date.

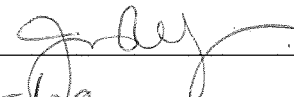
The authorized representatives of Sound Transit and City are signing this Agreement and the effective date shall be the last date written below.

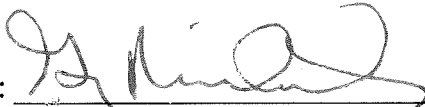
CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

CITY OF SEATTLE

Signed: 
Title: Deputy Chief Executive Officer
Dated: 10/15/09

Approved to form

Legal Counsel: 
Dated: 10/15/09

Signed: 
Title: Mayor
Dated: 11/11/09

Approved to form

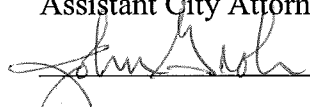
Assistant City Attorney:

Dated: 11-5-09

Exhibit A

Minimum Scope of Work for First Hill Streetcar Connector Project

The purpose of the First Hill Streetcar Connector Project (the Project) is to replace the connection to the regional Link light rail system lost when the First Hill light rail station was deleted from the regional system. The streetcar connector will directly connect First Hill employment centers to the regional Link light rail system at the International District/Chinatown Station at 5th Avenue S and the Capitol Hill Station at Broadway between E. Denny Way and John Street. If operations begin prior to July 1, 2016, the Project may feature an interim terminus in the vicinity of Pike and Pine streets.

The Project fleet (inclusive of at least one spare vehicle) and facilities will accommodate the service plan:

Service Plan	
1. Service Plan: Span of Service	Monday-Saturday 5AM to 1 AM Sundays/Holidays 7 AM to 7 PM
2. Service Plan: Peak/Off Peak Headways	Peak Periods: Trains Arrive Every 10 Minutes Off Peak: Trains Arrive Every 15 Minutes
3. Service Plan: Peak Service Periods	Peak Periods: 6 AM-9 AM M-F, 4PM -7PM M-F

The service plan may be adjusted with the written concurrence of Sound Transit's Operations Director.

The Project will provide local and inter-neighborhood transit service using modern low-floor light rail vehicles, similar to the streetcar vehicles operating in Portland, Seattle and Tacoma. The streetcars operate in single trainsets. The streetcars will generally operate in a mixed flow of traffic on urban arterial streets, typically with transit signal priority at intersections, and occasionally operating in restricted (transit-only) lanes or exclusive right-of-way. The Project will be double-tracked, although termini or exclusive-lane segments may feature a short segment of single track if this will not impede service objectives.

The Project will meet or exceed all safety and accessibility requirements and includes a variety of passenger amenities on board, at passenger platforms and on the internet, including transit shelters, real-time arrival information, automated passenger information, and ticketing. Use of the ORCA regional smart card will be accommodated either on-board, wayside, or with both of these methods of fare payment.

Passenger platforms will typically be spaced at distances of 1,250 to 2,000 feet and will be sited to best balance proximity of service to major activity areas with speed and reliability objectives.

The Project will include all construction, right-of-way and equipment necessary to meet the service objectives, including but not limited to:

- embedded track and special track;
- traction power system and overhead contact system;
- train control system and train signaling;
- passenger platforms and amenities including miscellaneous electrical service to amenities;
- a light maintenance and vehicle storage facility and vehicle maintenance equipment;
- roadway and drainage modifications (only immediately adjacent to Project);
- traffic signal modifications;
- street lighting modifications (only immediately adjacent to Project);
- utility relocation, protection and bridging necessitated by the Project;
- relocation of overhead trolley bus wires where necessary;
- mitigation measures; and
- an Art Program.

The Art Program will be administered by the City and is budgeted at \$750,000 in 2011 dollars to represent approximately 1% of estimated construction expenditure.

The Project will be designed to allow for connections to other segments of the City's planned streetcar network and may include extensions beyond the minimum scope of work, subject to the approval of the Sound Transit board.

Exhibit B**First Hill Project Capital Payments Schedule**

Payment Due Date	Maximum Reimbursement (Year of Expenditure Dollars)	Cumulative Maximum (Year of Expenditure Dollars)
November 1, 2009	\$ 2,500,000	\$2,500,000
March 1, 2010	\$ 700,000	\$3,200,000
June 1, 2010	\$ 700,000	\$3,900,000
September 1, 2010	\$840,000	\$4,740,000
December 1, 2010	\$840,000	\$5,580,000
March 1, 2011	\$ 9,400,000	\$14,980,000
June 1, 2011	\$ 3,908,000	\$18,888,000
September 1, 2011	\$5,400,000	\$24,288,000
December 1, 2011	\$9,494,000	\$33,782,000
March 1, 2012	\$11,430,000	\$45,212,000
June 1, 2012	\$13,016,000	\$58,228,000
September 1, 2012	\$13,366,000	\$ 71,594,000
December 1, 2012	\$13,366,000	\$84,960,000
March 1, 2013	\$10,216,000	\$95,176,000
June 1, 2013	\$10,730,000	\$105,906,000
September 1, 2013	\$15,420,000	\$121,326,000
December 1, 2013	\$4,454,000	\$125,780,000
March 1, 2014	\$7,000,000	\$132,780,000

Exhibit C

First Hill Project Operations & Maintenance Sample Payments Schedules Maximum Annual & Present Value Total Funding Obligation by Passenger Service Date

Passenger Service Date:		Q4 2012	Q1 2013	Q2 2013	Q3 2013	Q1 2014	Q1 2015	Q3 2016
Annual Maximum O&M Funding	Year	2012	\$0	\$0	\$0	\$0	\$0	\$0
	2013	\$4,150,000	\$4,275,000	\$3,210,000	\$2,140,000	\$0	\$0	\$0
	2014	\$4,300,000	\$4,420,000	\$4,540,000	\$4,670,000	\$4,910,000	\$0	\$0
	2015	\$4,450,000	\$4,570,000	\$4,700,000	\$4,830,000	\$5,080,000	\$0	\$0
	2016	\$4,610,000	\$4,730,000	\$4,860,000	\$5,000,000	\$5,260,000	\$5,670,000	\$3,545,000
	2017	\$4,770,000	\$4,900,000	\$5,030,000	\$5,180,000	\$5,440,000	\$5,870,000	\$7,340,000
	2018	\$4,940,000	\$5,070,000	\$5,210,000	\$5,360,000	\$5,630,000	\$6,080,000	\$7,590,000
	2019	\$5,110,000	\$5,250,000	\$5,390,000	\$5,550,000	\$5,830,000	\$6,290,000	\$7,860,000
	2020	\$5,290,000	\$5,430,000	\$5,580,000	\$5,740,000	\$6,030,000	\$6,510,000	\$7,860,000
	2021	\$5,480,000	\$5,620,000	\$5,780,000	\$5,940,000	\$6,240,000	\$6,980,000	\$8,130,000
2022	\$5,670,000	\$5,820,000	\$5,980,000	\$6,150,000	\$6,460,000	\$7,220,000	\$8,420,000	
2023	\$5,870,000	\$6,020,000	\$6,190,000	\$6,370,000	\$6,690,000	\$7,470,000	\$8,710,000	
Present Value:		\$41,100,000	\$41,000,000	\$41,100,000	\$41,200,000	\$41,200,000	\$41,200,000	\$41,200,000

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
SDOT	Ethan Melone/4-8066	Stephen Barham/3-9084

Legislation Title: AN ORDINANCE relating to the Seattle Streetcar, authorizing an agreement with the Central Puget Sound Regional Transit Authority for implementation of the First Hill Streetcar Connector Project.

Summary and background of the Legislation:

Project Name:	Project I.D.	Project Location:	Start Date:	End Date
First Hill Streetcar	TC367100	Various	2Q/2009	4Q/2013

The ST2 System Expansion Plan adopted by the Sound Transit Board and approved by the voters on Nov 2008 states that ST2 "...includes a new streetcar connector line between Downtown Seattle, First Hill and the future Capitol Hill light rail station." The ST Plan provides for Sound Transit to make a capped capital contribution of \$120 million in 2007 dollars, and to fund annual operations and maintenance costs of up to \$5.2 million in 2007 dollars. The City and Sound Transit completed a letter of intent in February 2009, providing for Sound Transit funding and City of Seattle implementation of the project. This legislation authorizes an agreement that formalizes the terms of the letter of intent, including identification of roles and responsibilities, eligible costs, and a payment schedule for Sound Transit funding and City of Seattle design, construction and operation (via interlocal agreement) of the First Hill Streetcar.

- *Please check any of the following that apply:*

 This legislation creates, funds, or anticipates a new CIP Project. *(Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)*

The First Hill Streetcar CIP project was created by Ordinance 123006 (the First Quarter 2009 Supplemental Budget Ordinance).

 This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

 X **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations: *This table should detail existing appropriations and reflect appropriations that are a direct result of this legislation. If this legislation does not directly change an appropriation,*



but has budget impacts, please explain in the notes section below:

Fund Name and Number	Department	Budget Control Level*	Existing 2009 Appropriation	New 2009 Appropriation (if any)	2010 Anticipated Appropriation
TOTAL					

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: This legislation does not appropriate funds, but authorizes an agreement that will establish the source of funds for the project.

Spending Plan and Future Appropriations for Capital Projects: *Please list the timing of anticipated appropriation authority requests and expected spending plan. In addition, please identify your cost estimate methodology including inflation assumptions, the projected costs of meeting applicable LEED standards, and the percent for art and design as appropriate.*

Spending Plan and Budget	2009	2010	2011	2012	2013	2014	Total
Spending Plan		3,080	28,202	51,178	40,820	7,000	132,780
Current Year Appropriation	2,500						
Future Appropriations		3,080	28,202	51,178	40,820	7,000	132,780

Notes:

2009 current year appropriations have been authorized through Ordinance 123006. The spending plan is presented in year of expenditure dollars. Note that the maximum funding available through the Interlocal agreement is in 2007 dollars; therefore, additional contingency funding is available if the project budget increases beyond the current spending plan.

The spending plan and budget include project expenditures of \$125.8 million through 2013, representing the preliminary capital cost estimate, inclusive of escalation and contingencies. \$7 million in 2014 represents a supplemental contingency. See Attachment A to the Fiscal Note, Preliminary Capital Cost Estimate.

Funding source: *Identify funding sources including revenue generated from the project, and the expected level of funding from each source. When applicable, make a notation indicating the source of funds is paying for debt service.*

Funding Source (Fund Name and Number, if applicable)	2009	2010	2011	2012	2013	2014	Total
Interlocal [477010]	2,500	3,080	28,202	51,178	40,820	7,000	132,780



TOTAL	2,500	3,080	28,202	51,178	40,820	7,000	132,780
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Notes:

Uses and Sources for Operation and Maintenance Costs for the Project: Estimate cost of one-time startup, operating and maintaining the project over a six year period and identify each fund source available. Estimate the annual savings of implementing the LEED Silver standard. Identify key assumptions such as staffing required, assumed utility usage and rates and other potential drivers of the facility's cost.

O&M	2009	2010	2011	2012	2013	2014	Total
Uses							
Operations & Maintenance					1,210	4,450	5,660
Sources (itemize)							
Intergovernmental					1,210	4,450	5,660
Sponsorship Revenue					330	330	660
Total					1,540	4,780	6,320

Notes:

Start-up costs are included in the capital project spending plan.
 O&M Cost above assumes operations begin fourth quarter 2013.
 O&M Cost above includes \$625,000 annual contribution to a Depreciation Fund.
 For operating assumptions, see Attachment B to the Fiscal Note.

Periodic Major Maintenance costs for the project: Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency.

Major Maintenance Item	Frequency	Cost	Likely Funding Source
Brake & wheel replacements	5-7 years	600	Depreciation Fund Included in O&M Costs
Vehicle overhaul	10-15 years	3,000	Depreciation Fund & Federal Funds (FTA Preventative Maintenance)
Traction Power System Overhaul	15-20 years	5,000	Depreciation Fund & Federal Funds
New vehicles	25-30 years	24,000	Depreciation Fund &



			Federal Funds
TOTAL	25-30 years	32,600	

Funding sources for replacement of project: Identify possible and/or recommended method of financing the project replacement costs.

The project will not require replacement if major maintenance activities are performed as described above.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Position # for Existing Positions	Fund Name & #	PT/FT	2009 Positions	2009 FTE	2010 Positions **	2010 FTE **
TOTAL							

* List each position separately

** 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.

Notes:

SDOT anticipates that it can manage this project with existing positions.

- **Do positions sunset in the future?** (If yes, identify sunset date):
- **What is the financial cost of not implementing the legislation:** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented):

If the legislation is not implemented, the City will not receive a capital contribution of up to \$132.8 million (in year of expenditure dollars) and operating revenue of up to \$5.2 million (in 2007 dollars) for the implementation and operation of transit service, and the First Hill Streetcar connector project may not be built. This could create further demands on the existing transit network



- **Does this legislation affect any departments besides the originating department?** • *If so, please list the affected department(s), the nature of the impact (financial, operational, etc.), and indicate which staff members in the other department(s) are aware of this Bill.*

Yes. Utility relocations will primarily affect Seattle Public Utilities. Seattle City Light will have some involvement in providing new electrical services and with likely modifications to streetlighting; some minor SCL utility relocations are also possible, though no significant conflicts have been identified to date. Key SPU contacts are Betty Meyer and Aziz Alfi. Key SCL contacts are Darnell Cola and Stephen Byers.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives** *(Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):*

There is no existing or planned transit service that would accomplish the objectives of the First Hill Streetcar and no fund source for transit improvements other than the First Hill Streetcar connector funding approved by voters as part of the Sound Transit expansion plan.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

The agreement protects the City from fiscal risk associated with the construction and operation of the project. The agreement provides that, should construction bids or the negotiated Maximum Allowable Construction Contract exceed funds available to the City, the City may reject the bids or the MACC and defer further action unless and until supplemental funding has been secured. The City's risk is limited to cost overruns during construction, but the City can choose not to proceed with construction if available construction contingencies are not considered sufficient to cover possible overruns. The agreement addresses the issues raised by the City Council Transportation Committee in their May 5, 2009 letter to the Director of Transportation. The agreement provides that the City is not obligated to operate all of the planned service described in Section 1.0 if the cost of providing all of the planned service would exceed total resources available to the City from the Sound Transit, the advertising and sponsorship revenues, and any grant funding that may be obtained from other Federal, State or local sources. The agreement provides that Sound Transit's financial contribution to operations and maintenance will include depreciation expenses, to be retained by the City in replacement reserve fund. Finally, the



Ethan Melone
SDOT First Hill Streetcar Agreement
August 24, 2009
Version #3a

agreement includes termination provisions consistent with the objectives expressed by the Committee.

Please list attachments to the fiscal note below:

Attachment A—First Hill Streetcar Preliminary Capital Cost Estimate

Attachment B—First Hill Streetcar Preliminary Operations Plan



Attachment A: First Hill Streetcar Preliminary Capital Cost Estimate

First Hill Streetcar--Preliminary Capital Cost Estimate In 2012 \$ (Mid-Point Construction)		
Route Length (Miles)		2.1
Preconstruction Phase	\$	7,000,000
Construction-Network Segments	\$	64,100,000
Construction Phase CM	\$	15,200,000
SubTotal	\$	86,300,000
Construction-Maintenance Facility	\$	15,000,000
Fleet Procurement	\$	24,500,000
Total	\$	125,800,000



Attachment B: First Hill Streetcar Preliminary Operations Plan

First Hill Streetcar: Preliminary Operations Plan	
Service Plan	
1. Service Plan: Span of Service	Monday-Saturday 5AM to 1 AM Sundays/Holidays 7 AM to 7 PM
2. Service Plan: Peak/Off Peak Headways	Peak Periods: Trains Arrive Every 10 Minutes Off Peak: Trains Arrive Every 15 Minutes
3. Service Plan: Peak Service Periods	Peak Periods: 6 AM-9 AM M-F, 4PM -7PM M-F
4 Service Plan: Annual Hours (Revenue Service)	19,100
Operating Costs	
5. Cost Per Revenue Hour (2013)	180 to 235/hour
6. Annual City Administration & Depreciation (2013)	\$625K
7. Direct Annual Operating Cost (2013)	\$3.4 M to \$4.5M
8. Total Annual Operating Cost (2013)	\$4 M to \$5.1 M
Operating Revenues	
9. Maximum ST Operating Subsidy (2013)	\$6.3 M
10. Sponsorship Revenues (2013)	\$0.3 M
11. Total Operating Revenue (2013)	\$6.7 M





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

September 1, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing an agreement with Sound Transit that provides funding for development and operation of the First Hill Streetcar.

Last fall, voters in our region approved "ST2," the mass transit expansion plan for our region. This measure builds on the Sound Move plan approved in 1996 to expand light rail, commuter rail and express bus service in our region. The ST2 Plan includes funding for the First Hill Streetcar connector project, which links First Hill employment centers to the light rail system via connections on Capitol Hill and in the International District. This is an important link in the regional transit system, and has the potential to be one of the earliest ST2 projects delivered for operation. This agreement would allow Sound Transit to leverage the experience the City has gained through construction and operation of the South Lake Union Streetcar line and represents a significant step toward realizing the streetcar network vision approved by the Council in Resolution 31091.

The First Hill Streetcar project will serve over 3,000 daily riders, provide access to jobs, and support economic development objectives of neighborhoods on the streetcar line. Thank you for your consideration of this legislation. Should you have questions, please contact Ethan Melone of SDOT at 4-8066.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a large, faint circular stamp or watermark.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



1
2 **ORDINANCE _____**

3 AN ORDINANCE relating to the Seattle Streetcar, authorizing an agreement with the Central
4 Puget Sound Regional Transit Authority for implementation of the First Hill Streetcar
5 Connector Project.

6 WHEREAS, the City Council has adopted Resolution 31091 "stating the City Council's support
7 for developing a streetcar network in the City of Seattle and identifying the most
8 promising streetcar routes for the City to pursue," including the First Hill Streetcar; and

9 WHEREAS, the Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit
10 Guide, the Regional Transit System Plan for Central Puget Sound (ST2) on July 24, 2008;
11 and

12 WHEREAS, ST2 includes, within the Link Light Rail Program, capital and operating
13 contributions to "a new streetcar connector line between downtown Seattle, First Hill, and
14 the future Capitol Hill light rail station;" and

15 WHEREAS, the Sound Transit Board of Directors called an election to approve local taxes to
16 implement ST2, which measure was approved by the electorate on November 4, 2008;
17 and

18 WHEREAS, the City is responsible for administering state and local transportation and land use
19 laws and development regulations that will apply to the development of the project and is
20 also responsible for managing streets and municipal utilities within its jurisdiction and for
21 providing municipal services; and

22 WHEREAS, the City has experience in the design, construction and operation of modern
23 streetcar connectors, having recently completed design and construction of the South
24 Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental
25 agreement with King County for Seattle Streetcar Operations & Maintenance; and

26 WHEREAS, the City has extensive experience with the General Contractor/Construction
27 Manager (GC/CM) alternative public works contracting procedures authorized by RCW
28 Chapter 39.10, including use of the GC/CM procedure for construction of the South Lake
Union Line of the Seattle Streetcar; and

WHEREAS, the Chief Executive Officer of Sound Transit and the Director of Transportation
have reached an agreement in principle providing for the City to design, build, operate



1 and maintain the First Hill Streetcar, and for Sound Transit to provide capital funding of
2 up to \$120 million (in 2007 dollars) and operating funding of up to \$5.2 million annually
3 (in 2007 dollars); NOW, THEREFORE

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. The Mayor or his designee is authorized to execute an agreement substantially
6 in the form of Attachment A.
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1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of _____, 2009, and signed by me in open
5 session in authentication of its passage this ____ day of _____, 2009.

6
7
8 _____
9 President _____ of the City Council

10 Approved by me this ____ day of _____, 2009.

11
12
13 _____
14 Gregory J. Nickels, Mayor

15 Filed by me this ____ day of _____, 2009.

16
17
18 _____
19 City Clerk

20 (Seal)

- 21 Attachment A – FUNDING AND COOPERATIVE AGREEMENT between the Central Puget
22 Sound Regional Transit Authority and the City of Seattle for the Implementation of the
23 First Hill Streetcar Connector Project
24 Exhibit A to Attachment A – Minimum Scope of Work for First Hill Streetcar Connector Project
25 Exhibit B to Attachment A – First Hill Project Capital Payments Schedule
26 Exhibit C to Attachment A – First Hill Project O & M Sample Payments Schedule
27 Exhibit D to Attachment A – Primary Contacts



ATTACHMENT A
FUNDING AND COOPERATIVE AGREEMENT BETWEEN
THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY AND
THE CITY OF SEATTLE
FOR THE
IMPLEMENTATION OF THE FIRST HILL STREETCAR CONNECTOR
PROJECT

This funding and cooperative agreement (“**Agreement**”) is between the Central Puget Sound Regional Transit Authority, a regional transit authority organized under RCW 81.112 (“**Sound Transit**”) and the City of Seattle, a Washington municipal corporation (“**City**”).

RECITALS

A. The Sound Transit Board of Directors adopted Sound Transit 2, A Mass Transit Guide, the Regional Transit System Plan for Central Puget Sound (“ST2”) on July 24, 2008. ST2 includes, within the Link Light Rail Program, capital and operating contributions to “a new streetcar connector line between downtown Seattle, First Hill, and the future Capitol Hill light rail station” (“the Project”). As stated in the adopted ST2 plan, “(t)he new connector will also provide convenient access to the Sounder commuter rail system and regional bus services.” The Sound Transit Board of Directors called an election to approve local taxes to implement ST2, which measure was approved by the electorate on November 4, 2008.

B. On January 26, 2006, the Sound Transit Board which authorized staff to proceed with the second phase of the First Hill Work Program – technical work on potential First Hill transit connector (streetcar and bus) improvements in the Broadway and Madison corridors. This effort included conceptual engineering (five percent design completion), preparation of cost estimates, and consideration of environmental issues. The purpose of the study was to further evaluate the feasibility of improved regional transit access to the First Hill area. The Motion also confirmed that no further work would be advanced on the



previous First Hill light rail station or alternative light rail station sites. Sound Transit staff, in cooperation with City of Seattle and King County Metro staff, and with the support of the ST2 engineering design team, completed the First Hill Work Program on April 17, 2007.

C. The City is responsible for administering state and local transportation and land use laws and development regulations that will apply to the construction and operation of the Project. The City is also responsible for managing streets and municipal utilities within its jurisdiction and for providing municipal services, such as public safety.

D. The City has experience in the design, construction and operation of modern streetcar connectors, having recently completed design and construction of the South Lake Union Line of the Seattle Streetcar and having entered into an intergovernmental agreement with King County for Seattle Streetcar Operations & Maintenance.

E. The City has extensive experience with the General Contractor/Construction Manager ("GC/CM") alternative public works contracting procedures authorized by RCW 39.10, including use of the GC/CM procedure for construction of the South Lake Union Line of the Seattle Streetcar.

F. The City Council has adopted Resolution 31091 "stating the City Council's support for developing a streetcar network in the City of Seattle and identifying the most promising streetcar routes for the City to pursue," including the Project.

G. Both Sound Transit and the City ("the Parties") have determined that it is in the public interest for the City to construct and operate the Project.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Parties agree to the following:



AGREEMENT

1. Project Scope

1.1. The Project consists of the design and construction (directly or by others under the City's direction) of the Project as set forth in the "Minimum Scope of Work" which is attached hereto as **Exhibit A**, and is made part of this Agreement by this reference. The Project includes management and implementation of all actions required to design, construct, equip and operate the Project. The Project may also include design and construction of the streetcar connector north of the Capitol Hill Station at John Street or beyond the International District/Chinatown Station at 5th Avenue S, subject to Sound Transit approval and concurrence and the funding limitations provided in Section 3.

2. Project Management and Construction

2.1. The City will take all steps necessary to design and construct the improvements for the Project as identified in **Exhibit A**, including without limitation environmental review and mitigation, hazardous waste removal or mitigation, coordination of all required approvals and permits, acquisition of right-of-way, purchase of streetcar vehicles, community involvement and construction management.

2.2. The City will draft a community outreach plan for project planning, design and construction, including Neighborhood Updates, for Sound Transit's review and concurrence. The outreach plan will address how the City will establish effective communication with property owners, residents and businesses in the Project area in order to keep them fully informed about the planning, design, construction and operation of the Project. The outreach plan will describe how the City will communicate the scope and schedule of the Project to affected property owners, residents and businesses and how regular communication with the



community will be conducted on a regular basis throughout the construction phase. Other methods of communication such as a 24-hour construction hotline and/or multi-media public information program will be considered and addressed in the outreach plan if appropriate for the Project. The outreach plan will also address how the City will mitigate impacts to residents and businesses and minimize disruption during construction, as disclosed in the environmental review process. The outreach plan will describe how information will be exchanged with non-English speaking property owners, residents or businesses, including methods for responding to complaints. A public safety education campaign to be implemented prior to testing of the system will also be included in the outreach plan. The City and ST will coordinate the outreach plans for ST's University Link project and this Project, and the City will ensure their and consistency.

2.3. The City will employ or contract with all persons or entities necessary to complete construction of the Project and will be responsible for design, environmental compliance, community outreach, permitting, management, control, operation, construction, maintenance, acquisition of real property interests, and procurement of streetcar vehicles necessary to operate the Project. Sound Transit may place an engineer and/or other inspection personnel on the work site during the term of this Agreement to monitor progress of the Project and/or to monitor adherence to the required provisions of this Agreement. The City will make the site accessible to Sound Transit inspection personnel. The cost of this work by Sound Transit is an Eligible Cost and is therefore deductible against Sound Transit's maximum funding obligation, but in an amount not to exceed \$10,000 per month.

2.4. The City will coordinate environmental review with Sound Transit and provide Sound Transit with the opportunity for design review and coordination through construction.



2.4.1. The City will be the nominal lead agency for State Environmental Policy Act (SEPA) compliance on this Project. City SEPA rules will govern the SEPA process, including SEPA appeal procedures. The City is responsible for conducting the SEPA process and preparing and distributing all environmental documents. Sound Transit will act as a co-lead agency and have 30 calendar days to review a preliminary draft of the SEPA document and shall approve the final SEPA document in writing prior to its publication. Sound Transit and the City will coordinate with each other to ensure that the SEPA documentation provides the appropriate substantive and procedural compliance pursuant to SEPA to inform the Sound Transit Board's decision on funding the Project. The City will have lead responsibility for addressing any requirements under the National Environmental Policy Act (NEPA), should they apply.

2.4.2. The City will provide Sound Transit with the opportunity to provide design review, approval and coordination during construction to ensure that the Project meets the Minimum Scope of Work as provided in Section 2.5; does not interfere with Sound Transit's construction of the Link Capitol Hill Station and University Link line; supports the goal of providing easy transfers between the Project and Link Light Rail, Sounder Commuter Rail and regional Express bus services; and to identify design issues impacting operations. Sound Transit will review and provide written comments on design documents, including cost estimates and traffic analysis, at 30-, 60- and 90- percent completion, within 21 calendar days of receipt by ST, or as otherwise agreed upon by the Primary Contacts. The City shall address and respond to every written comment submitted by Sound Transit. The City will provide a schedule of deliverables to Sound Transit in advance so that Sound Transit can plan its review time prior to its receipt of the deliverables.



2.5. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost (“MACC”) for the Project negotiated by the City through the GC/CM process, would commit the City to pay more than the funds available to the City for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, the Parties will decide whether to reissue the same or an amended proposal under the terms of this Agreement, or to terminate this Agreement in accordance with Section 6 of this Agreement. The City will be responsible for securing any supplemental sources of funds that may be necessary prior to proceeding with construction. Sound Transit will support the City in seeking additional funding for the Project to the extent that Sound Transit’s support does not conflict with its seeking funding for other Sound Transit projects.

2.6. Before the City puts the Project out to bid, or before the City authorizes a GC/CM to proceed with the bidding or award of bid packages, the Director of the City’s Department of Transportation shall certify in writing to Sound Transit’s Chief Executive Officer that the bid documents for the Project meet both the capital and operating requirements of the Project scope established in Section 1.0.

2.7. The City shall pay any cost overruns that may occur during construction that would increase the cost beyond Sound Transit’s maximum funding obligation.

3. Sound Transit’s Financial Participation-Capital Expenditures

3.1. Maximum Funding Contribution to the Project. The ST2 Plan establishes a maximum capital contribution for the Project. Sound Transit will reimburse the City for Eligible Costs as defined in section 3.2, in accordance with the schedules and maximum funding contribution set forth in the First Hill Project Capital Payments Schedule, which is attached as **Exhibit B**. However, until the City



completes the environmental review of the Project and the Sound Transit Board makes a final decision to fund the Project, the City may only incur the following costs: (1) environmental documentation, (2) conceptual engineering, and (3) other costs, pre-approved by Sound Transit, that do not have an adverse environmental impact, do not limit the choice of reasonable alternatives, and are otherwise consistent with SEPA. Further, Sound Transit is not responsible for reimbursing these pre-final decision costs in an amount greater than Five Million, Four Hundred and Forty Thousand Dollars (\$5,440,000.00), unless and until the ST Board makes a final decision to fund the Project.

3.2. Eligible Costs. All costs of the Project consistent with the Project scope as defined in Section 1.0, including without limitation the cost of management, interim financing and implementation of all actions required to design, construct, equip and prepare for operational start-up of the Project, are eligible costs. Legal costs incurred by the City in any action against Sound Transit are specifically excluded from the category of eligible costs.

3.3. The City will invoice Sound Transit for Project work done at least 30 days before the "Reimbursable Due Dates" listed in Exhibit B. A properly documented invoice includes documentation that the Project work that the City seeks reimbursement for has been performed. Upon Sound Transit's preliminary determination that the City has submitted invoices for eligible costs incurred by the City, Sound Transit will reimburse the City on the quarterly Reimbursement Due Date in an amount not to exceed the funding reimbursement provided in Exhibit B for that particular Reimbursement Due Date, plus any funds from previous quarters that have not been previously requested by the City. However, if the City submits its invoices after 30 days before the Reimbursement Due Date, Sound Transit will reimburse the City within 30 days of its receipt of the properly documented invoice. Upon final acceptance and closeout of the Project construction, the Parties will reconcile final Eligible Costs, and Sound Transit will



pay the balance of all unreimbursed Eligible Costs, less Sound Transit's actual cost of funds to make payments, according to the maximum amount reflected on the Exhibit B payment schedule.

4. Operations and Maintenance

4.1 City Responsibility. The City is responsible for operating and maintaining the Project. Sound Transit is not obligated to fund the operations and maintenance of a project that does not meet the minimum Project scope established in Section 1. The City is not obligated to operate all of the planned service described in Section 1 prior to July 1, 2016, and is not obligated to operate all of the planned service described in Section 1 if the cost of providing all of the planned service would exceed total resources available to the City from the Sound Transit contribution described in section 4.4, the advertising and sponsorship revenues described in section 4.7, and any grant funding that may be obtained from other Federal, State or local sources. The City is also responsible for conducting fare enforcement for the Project in accordance with Sound Transit's policy requiring that on-board verification of fare payment occur for a minimum of ten percent (10%) of riders each day. Fare enforcement is an eligible operations and maintenance expense under this Agreement

4.2 Operation by King County. The City may work with King County to develop a proposed agreement for initial operations and maintenance of the System to be performed by King County Metro for up to five years, consistent with the provisions of the "Interlocal Agreement between King County and City of Seattle for Seattle Streetcar Operations and Maintenance." Sound Transit may take part in these discussions. If the City and King County cannot reach agreement on operations and maintenance, for the initial operation of the Project the City and Sound Transit may enter into negotiations for operation and maintenance of the Project by Sound Transit



4.3 Sound Transit reserves the right to operate the Project directly after five years of operation. If Sound Transit exercises this right to operate the Project directly, the City will transfer, at no-cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement for the use of the Project right-of-way with Sound Transit. Upon transfer of ownership, and execution of appropriate right-of-way use agreements, this agreement will terminate.

4.4 O&M Funding and Payments. In accordance with the ST2 operations and maintenance cost estimate, Sound Transit will contribute certain annual capped amounts to fund O&M costs, that will vary depending on whether operations start before or after July 1, 2016, but will not exceed the present value of the payment stream projected in the ST2 operations and maintenance cost estimate, which is based on a maximum payment of \$5.2 million (in 2007 dollars) beginning July 1 2016 and continuing through 2023. If operations begin prior to July 1, 2016, the annual payments will be lowered so that total payments will not exceed this present value. Examples of the maximum annual payments associated with possible passenger service dates for operations are illustrated in **Exhibit C**. The City will invoice Sound Transit quarterly for estimated costs not to exceed one-quarter of the maximum annual payment authorized. Actual, eligible costs will be reconciled against payments annually. In the event the annual reconciliation determines that Sound Transit has paid City in excess of the actual eligible costs for the prior year, the excess amount will be deducted from the payments scheduled for the following year.

4.5 Eligible O&M Expenses for Reimbursement. Eligible expenses for reimbursement from Sound Transit shall include payments to King County Metro, or other third party operators per the terms of the initial operating agreement as provided for in Section 4.2; direct expenses of the City, which may include administration and the cost of any operation and maintenance responsibilities retained by the City per the terms of the initial operating agreement; insurance



expenses; annual depreciation expense of up to Six-Hundred Thousand Dollars (\$600,000) per year in 2012 dollars, escalated according to the indices established by Sound Transit; and any tax associated with this reimbursement. The payment for depreciation expense will be deposited into a City fund restricted to payment of major maintenance, repair, replacement and regulatory compliance expenses for the Project. The City will provide an annual, written report to Sound Transit on fund activity including deposits, expenditures and uses of the funds.

4.6 Fare Box Revenue. Sound Transit will retain farebox revenue.

4.7 Cost in Excess of Sound Transit Funding Obligation. The City is responsible for major maintenance, replacement, and all remaining O&M costs beyond the amount Sound Transit contributes as provided in Section 4.4 and 4.5.

4.8 Other Revenues. Other revenues, including but not limited to revenues from agreements for advertising or sponsorship of vehicles and stations, shall be retained by the City and be available for any purpose related to the operation, maintenance or development of the Seattle Streetcar Network. Sound Transit shall have right of first refusal to enter into agreements with the City for sponsorship of vehicles and/or stations, at a price equal to fifty percent of the advertising or sponsorship rates currently in effect at the time of the agreements.

4.9 Acknowledgement of Funding. The City will ensure acknowledgement of Sound Transit funds for the Project is noted in any advertisements and postings. The graphic identity of the vehicles, facilities and collateral and web-based materials will incorporate both the City's Seattle Streetcar and the Sound Transit logo and identity.

4.10 Ownership and Use of Facilities. The City will own the Project facilities and vehicles. The City may deploy vehicles acquired for the Project on any connecting portions of the City's existing and proposed streetcar network, upon



Sound Transit's written concurrence that the proposed deployment does not negatively affect the quality or level of service of the Project service area. The City will not abandon or transfer any of the facilities or right-of-way required for the operation of the Project without giving Sound Transit right of first refusal to enter into a no-cost agreement with the City for the transfer of ownership, right-of-way use, and operation of the Project as designed to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the right-of-way.

4.11 Customer Service and Information. The City will provide customer service for the Project. The customer service quality will be at least equivalent to the customer service provided for Sound Transit's Link Light Rail.

4.12 As a condition of Sound Transit's receipt of federal grant funds to acquire capital assets in connection with Central Link, Sound Transit and various unions representing transit employees in the Sound Transit service area have entered into an "Agreement Pursuant to Section 13 (c) of the Federal Transit Act", dated February 29, 1996 and as amended March 30, 1999 (hereinafter referred to as Sound Transit's 13(c) Agreement). With respect to City employees (or the City's contracted operator's employees, including King County's employees), the City agrees to comply with the terms of Sound Transit's 13(c) Agreement and ensures that its operator complies with the provisions of Sound Transit's 13(c) Agreement.

5. Dispute Resolution

5.1. Sound Transit and the City shall confer to resolve disputes that arise under this Agreement as requested by either party.

5.2. The individuals identified in the attached **Exhibit D** are the Designated Representatives of the Parties for the purpose of resolving disputes that arise under this Agreement. The parties may unilaterally amend this exhibit to change

their respective representative by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

5.3 In the event the Designated Representatives are unable to resolve the dispute within 10 business days, the Executive Director of Planning, Environment and Project Development of Sound Transit and the Director of the City's Department of Transportation, or their designees, shall confer and resolve the dispute.

5.4 Sound Transit and the City agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

6 Termination of the Agreement

6.1 Termination if Project Deemed Too Expensive. In the event that accepting the lowest responsive responsible bid(s) for the Project obtained by the City through a public works procurement, or the Maximum Allowable Construction Cost ("MACC") for the Project negotiated by the City through the GC/CM process, would commit either party to pay more than the funds available to that party for this Project, the bids or the MACC will be rejected. In the event bids are rejected or the MACC is not executed, either Party may terminate this Agreement eighteen months after the bids have been rejected.

6.2 Termination for Default. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 30 days. If the failure or violation is not corrected, this Agreement may be terminated five working days from written notice of the aggrieved party's intent to terminate.

6.2.1 Sound Transit Default. In the event of termination due to Sound Transit default, Sound Transit will compensate the City for all contract



closeout costs, the portion of work which has been satisfactorily rendered to the date of termination, and executed long-lead procurement contracts that cannot be cancelled.

6.2.2 City Default. In the event of termination due to City default prior to operation, the City will reimburse Sound Transit for its funding under this Agreement. If the termination occurs after the start of operations, then, at Sound Transit's request, the City will transfer, at no cost to Sound Transit, ownership of the Project to Sound Transit. The City will also enter into a no-cost agreement with Sound Transit for the use of the Project right-of-way.

6.3 Termination for Convenience. A termination for convenience by either party shall not extinguish or release either party from liability, claims or obligations to third parties existing as of the time of termination including contractor claims and costs incurred by the party in the execution of Work. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement. The party terminating for convenience is obligated to pay for all construction closeout costs. The parties agree to work together cooperatively to develop a coordinated plan for termination including the determination of reasonable contract closeout costs.

6.4 Procedures upon Termination. Sound Transit and the City agree to apply the following procedures after either party terminates this Agreement:

6.4.1 The parties shall seek a joint determination on the status of each cost component of the work at the initiation of termination.

6.4.2 The parties shall seek consensus on the action to be taken on each component.

6.4.3 The parties may agree to arrange for the assignment and assumption of obligations of third party contracts for the performance of work under this Agreement.



6.4.4 The parties shall agree upon a cost estimate for terminating any third party contracts that have been executed under the Agreement.

6.5 Survival of this Section. The terms and responsibilities of the Parties under this Section 6 will survive termination of this Agreement

7 Audit

The City agrees to cooperate fully with Sound Transit's auditor or an independent auditor chosen, retained, and paid by Sound Transit to audit costs incurred in design, construction, operation and maintenance of the Project. In the event the audit determines that Sound Transit has paid City in excess of the amounts approved by Sound Transit for the Project, the excess amount will be repaid to Sound Transit. In the event the audit determines that City has incurred costs for the Work that exceeds payment made by Sound Transit, Sound Transit shall pay City the amount owed, up to its maximum funding obligations under this Agreement.

8 General Provisions.

8.1 No Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party. In performing work and services pursuant to this Agreement, Sound Transit, its employees, consultants, agents, and representatives shall be acting as agents of the Sound Transit and shall not be deemed or construed to be employees or agents of City in any manner whatsoever. Sound Transit shall not hold itself out as, nor claim to be, an officer or employee of City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of City. Sound Transit shall be solely responsible for any claims for wages or compensation by Sound Transit's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold City harmless therefrom. In performing work and services pursuant to this Agreement, City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or



construed to be employees or agents of the Sound Transit in any manner whatsoever. City shall not hold itself out as, nor claim to be, an officer or employee of the Sound Transit and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Sound Transit. City shall be solely responsible for any claims for wages or compensation by City's employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify, and hold Sound Transit harmless therefrom.

8.2 Indemnity.

8.2.1 Generally. Each party to this Agreement shall protect, defend, indemnify, and save harmless the other party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from the first party's negligent or grossly negligent acts or omissions or its intentional misconduct. No party will be required to indemnify, defend, or save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other party. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that a party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this section, all such fees, expenses, and costs shall



be recoverable from the responsible party to the extent of that party's liability. This indemnification will survive the termination of this Agreement.

8.2.2 **13(c) Liability.** The City shall defend, indemnify, and hold harmless Sound Transit its officials and employees against any and all claims, demands, suits, actions, damages or liability (collectively "13(c) Claims") for labor protections provided to transit employees within Sound Transit's service area under 49 U.S.C. §5333(b) that are based upon a Sound Transit 13(c) agreement or arise out of, are connected to, or are materially related to the commencement, operation, modification, or termination of the Project service. The City's obligation shall apply whether the claim is brought under a Sound Transit 13(c) agreement or a City or King County 13(c) agreement, or all, and whether it is brought against Sound Transit or against the City or County, or against any all. Notwithstanding any other requirements of this provision, the City's obligation shall not extend to any claim or liability based upon any act or omission of Sound Transit or anyone acting on behalf of Sound Transit.

8.2.3 **Taxes.** Taxes, including taxes relating to Sound Transit's reimbursement of the City's cost, are a reimbursable cost under this Agreement. The City shall indemnify Sound Transit for any taxes, including business and occupation taxes, sales taxes, utility tax, miscellaneous tax, due to the taxing authority by the City or Sound Transit with regard to payments made under this Agreement.

8.3 Claims.

8.3.1 Each party shall have the right to settle, or cause to be settled for it, all claims for loss and damage for which such party is liable under



this Agreement and to defend or cause to be defended all suits for the recovery of any loss and damage.

8.3.2 In the event a suit is commenced against either party, or a claim is asserted for loss or damage for which the other party may be solely or jointly liable under this Section, the party sued, or against whom the claim is asserted, promptly shall notify the other party in writing of the pendency of the suit or claim, and thereupon such other party shall assume or join in the defense of such suit or claim.

8.3.3 In the event that both of the parties may be liable for any loss or damage and the loss or damage is voluntarily settled by one of the parties, a release from liability shall be taken for and in the name of both parties. Prior to settling any such claim or suit for an amount in excess of fifty thousand dollars (\$50,000), the settling party shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. It is not the intent of the Parties that such consent be deemed an admission of joint liability for the claim or suit for the damage or loss.

8.3.4 It is not the intent of the parties for either party to be conclusively bound by any judgment against the other party.

9 Miscellaneous

9.1 Entire Agreement. This Agreement and the attached exhibits constitute the entire agreement and understanding between City and Sound Transit relating to the Project. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced in this Agreement.



9.2 Amendments. Waivers, modifications, additions, or amendments to this Agreement must be in writing and signed by the authorized representatives of each party.

9.3 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless will be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

9.4 Primary Contacts. The primary contacts for each party in the day-to-day dealings of this Agreement are listed in **Exhibit D**. The parties may unilaterally amend this exhibit to change their respective primary contact by sending a copy of the amended exhibit to the other party. The amendment becomes effective upon delivery.

9.5 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and either shall be: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically to the other party's primary contact as listed in **Exhibit D**. However, notice under section 6, Termination, must be delivered in person or by certified mail, return receipt requested.

9.6 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder are in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. Waiver by either party of any default will not affect or impair any right arising from any subsequent default. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof.

9.7 Choice of Forum. In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that any such action or proceedings will be brought in a court of competent jurisdiction in King County, Washington.

9.8 Transfer/Assignment. Neither party may assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other party. This Agreement is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

9.9 Benefits. This Agreement is intended for the sole benefit of the parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the parties any legal or equitable right, remedy, or claim under this Agreement.

9.10 Preparation. The parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, the parties intend that this Agreement is the joint work product of the parties. The parties do not intend for any provision of this Agreement to be construed against a party on the basis of authorship.

9.11 Counterparts. This Agreement may be simultaneously executed in duplicate counterparts, each of which will be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

9.12 Authority. The persons signing this Agreement warrant that they have the respective power and authority to sign this Agreement on behalf of their city or regional transit authority, respectively.

10 Term of Agreement.

This Agreement shall be effective on the last date written below and, unless it is otherwise terminated in accordance with the provisions of this Agreement, it shall remain in effect until December 31, 2023.



The authorized representatives of Sound Transit and City are signing this Agreement and the effective date shall be the last date written below.

CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY

CITY OF SEATTLE

Signed: _____

Signed: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

Approved to form

Approved to form

Legal Counsel: _____

Assistant City Attorney:

Dated: _____

Dated: _____



123117

FILED
CITY OF SEATTLE
2010 JAN 12 PM 3:37
CITY CLERK

STATE OF WASHINGTON – KING COUNTY

--SS.

245936
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

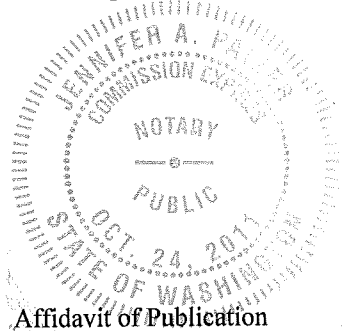
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123117-19,21,23,24,26.

was published on

10/14/09

The amount of the fee charged for the foregoing publication is the sum of \$ 106.13, which amount has been paid in full.



Handwritten signature of Pamela Oglesby

Subscribed and sworn to before me on

10/14/09

Handwritten signature of Notary Public

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on October 5, 2009, and published here by title only, will be mailed upon request, or can be accessed

at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123127

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 123126

AN ORDINANCE relating to the City Light Department, declaring as surplus and authorizing the Superintendent of the City Light Department to release three (3) easements for electrical service over properties located at 1318 Western Avenue, 12738 33rd Avenue NE, and 14027 Lake City Way NE in Seattle, Washington, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123124

AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a facility use agreement with Seattle University, for use and occupancy of KeyArena and adjacent areas at the Seattle Center.

ORDINANCE NO. 123123

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Theatre Puget Sound to manage and operate space in the Seattle Center House for use by non-profit arts organizations and individual artists.

ORDINANCE NO. 123121

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to execute a lease amendment between the City of Seattle and Fu Quan, LLC, a Washington limited liability company, for property located at 800 Maynard Avenue South.

ORDINANCE NO. 123119

AN ORDINANCE relating to the City Light Department; authorizing execution of a 20-year agreement with the King County Wastewater Treatment Division for the purchase of renewable power and environmental attributes of power generated at the West Point Wastewater Treatment Facility and other related agreements that are necessary or convenient to establish and operate the generator interconnection.

ORDINANCE NO. 123117

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with AEG Management WA, LLC for AEG to provide certain marketing, sales, technical operations and other services related to KeyArena at Seattle Center.

ORDINANCE NO. 123118

AN ORDINANCE relating to the Seattle Streetcar, authorizing an agreement with the Central Puget Sound Regional Transit Authority for implementation of the First Hill Streetcar Connector Project.

Publication ordered by the City Clerk
Date of publication in the Seattle Daily
Journal of Commerce, October 14, 2009.

10/14(245936)